

United States  
Circuit Court of Appeals  
For the Ninth Circuit

THE EQUITABLE TRUST COMPANY OF NEW YORK, as sole TRUSTEE under a Deed of Trust made by the Great Shoshone and Twin Falls Water Power Company, dated May 1, 1910, and Supplemental Mortgages dated June 21, 1911, and April 7, 1913,  
Appellant,

vs.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a corporation, WILLIAM T. WALLACE as Receiver of Great Shoshone and Twin Falls Water Power Company, GUY I. TOWLE, and CARL J. HAHN, as Administrator of the Estate of Harry M. King, deceased, Defendants, and L. M. PLUMER and E. B. SCULL, Executors of the Estate of L. L. McClelland, deceased, JAKE M. SHANK, and AMERICAN WATER WORKS AND ELECTRIC COMPANY, a corporation, interveners,  
Appellees.

AMERICAN WATER WORKS AND ELECTRIC COMPANY, a corporation, intervener,  
Appellant,

vs.

GUY I. TOWLE, CARL J. HAHN, as Administrator of the Estate of Harry M. King, deceased, GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a corporation, and WILLIAM T. WALLACE, as Receiver of Great Shoshone and Twin Falls Water Power Company, Defendants, L. M. PLUMER and E. B. SCULL, Executors of the Estate of L. L. McClelland, deceased, and JAKE M. SHANK, interveners, and THE EQUITABLE TRUST COMPANY OF NEW YORK, as sole Trustee under a Deed of Trust made by the Great Shoshone and Twin Falls Water Power Company, dated May 1, 1910, and Supplemental Mortgages dated June 21, 1911, and April 7, 1913,  
Appellees.

Transcript of the Record

*Upon Appeal From the United States District Court  
for the District of Idaho, Southern Division.*



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**Circuit Court of Appeals**  
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GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a corporation, WILLIAM T. WALLACE as Receiver of Great Shoshone and Twin Falls Water Power Company, GUY I. TOWLE, and CARL J. HAHN, as Administrator of the Estate of Harry M. King, deceased, Defendants, and L. M. PLUMER and E. B. SCULL, Executors of the Estate of L. L. McClelland, deceased, JAKE M. SHANK, and AMERICAN WATER WORKS AND ELECTRIC COMPANY, a corporation, interveners,  
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AMERICAN WATER WORKS AND ELECTRIC COMPANY, a corporation, intervener,  
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vs.

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Appellees.

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**Transcript of the Record**

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*Upon Appeal From the United States District Court  
for the District of Idaho, Southern Division.*

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*In the District Court of the United States for the  
District of Idaho, Southern Division.*

In Equity No. 526

THE EQUITABLE TRUST COMPANY OF NEW YORK, as sole Trustee under a Deed of Trust made by Great Shoshone and Twin Falls Water Power Company, dated May 1, 1910, and Supplemental Mortgages dated June 21, 1911, and April 7, 1913, *Complainant,*

AGAINST

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a Corporation, WILLIAM T. WALLACE as Receiver of Great Shoshone and Twin Falls Water Power Company, GUY I. TOWLE, and CARL J. HAHN as Administrator of the Estate of Harry M. King, deceased, *Defendants.*

### BILL OF COMPLAINT

*To the Honorable the Judges of the District Court  
of the United States for the District of Idaho,  
Southern Division:*

The Equitable Trust Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York, as Trustee under a certain Deed of Trust made by Great Shoshone and Twin Falls Water Power Company, dated May 1, 1910, and Supplemental Mortgages dated June 21, 1911, and April 7, 1913, brings this bill of complaint against the above named defend-

ants and thereupon your orator respectfully shows:

*First.* Your orator is a corporation organized and existing under and by virtue of the laws of the State of New York, having its principal office and place of business at No. 37 Wall Street in the Borough of Manhattan, City of New York, in said State, and is authorized by law and its Certificate of Incorporation to accept and execute trusts of the character hereinafter set forth.

*Second.* Your orator is informed and believes and therefore alleges that the defendant Great Shoshone and Twin Falls Water Power Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, of which State it is a citizen, and having its statutory office in Wilmington in the said State, but has all of its property and business in the State of Idaho, where it is duly licensed to carry on such business and where its principal office and place of business is at Twin Falls, in Twin Falls County; and that the defendant William T. Wallace is a citizen of the State of Idaho and a resident of Twin Falls County in said State; and that the defendant Guy I. Towle is a citizen of the State of Idaho and a resident of Lincoln County in said State; and that the defendant Carl J. Hahn as administrator of the estate of Harry M. King, deceased, is a citizen and resident of the State of Idaho.

*Third.* Heretofore and prior to the 21st day of July, 1910, the defendant Great Shoshone and Twin Falls Water Power Company, in the exercise of its lawful powers and in accordance with resolutions

duly passed by its Board of Directors at a meeting thereof duly called, convened and held, and in accordance with the consent of all of its stockholders thereunto duly given, duly authorized the issue of a series of bonds to be issued in an aggregate principal sum not exceeding Ten Million Dollars (\$10,000,000), said bonds to bear interest at the rate of five per cent (5%) per annum, payable semi-annually on the first days of May and November in each year, to bear date the first day of May, 1910, to be payable the first day of May, 1950, and to be issued in denominations of \$25,000, \$1,000 and \$500, by the terms of which bonds said Great Shoshone and Twin Falls Water Power Company promised to pay to the bearer, or, in case of registration of any bond to the registered holder thereof, the principal amount of said bond in gold coin, lawful money of the United States of America, of the then existing standard of weight and fineness, at the banking house of The Trust Company of America in the City of New York, on May 1, 1950, and to pay interest thereon semi-annually in like gold coin on the first day of May and the first day of November in each year until the payment of said principal sum, upon presentation and surrender of the coupons attached to said bonds at said banking house of The Trust Company of America in the City of New York, as such coupons severally became due and payable. The form and tenor of said bonds and said coupons are set forth at length in the Deed of Trust dated May 1, 1910, hereinafter more particularly referred to.



*Fourth.* On or about the 21st day of July, 1910, said Great Shoshone and Twin Falls Water Power Company, being thereunto duly authorized by the action of its Board of Directors, and with the due consent of all of its stockholders, duly made and executed to The Trust Company of America, of the City of New York and State of New York, a corporation organized and existing under the laws of the State of New York, and James D. O'Neil, of the City of Pittsburgh, State of Pennsylvania, as Trustees, its certain Deed of Trust bearing date May 1, 1910, a copy of which is annexed hereto and filed herewith, marked "Exhibit A," to which your orator prays leave to refer with the same effect as if it were fully set forth in this bill of complaint. In and by said Deed of Trust, said Great Shoshone and Twin Falls Water Power Company, in order to secure the due and punctual payment of the principal and interest of all of the aforesaid bonds issued and at any time outstanding, granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over unto the said The Trust Company of America and James D. O'Neil as Trustees and their successor or successors in the trusts therein created, all of the various parcels, premises, properties, rights, permits, plants, dams, reservoirs, flumes, canals, tunnels, raceways, controlling works, machinery, lines, buildings, improvements, water wheels, weirs, generators, dynamos, switchboards, transformers and all machinery, appliances and appurtenances and franchises and all other property,



real, personal or mixed of said Great Shoshone and Twin Falls Water Power Company whether then owned or thereafter acquired as enumerated or referred to in said Deed of Trust dated May 1, 1910, to have and to hold all and singular said plants, works and other property and the rights, privileges and franchises thereby conveyed or intended so to be, together with all and singular the remainders, rents, revenues, incomes, issues and profits thereof and the privileges or appurtenances then or thereafter belonging or in any wise appertaining thereto, unto the said Trustees, their successors and assigns, in fee simple forever, in trust nevertheless, for the equal and *pro rata* benefit of all the holders of said bonds and coupons, without preference or priority by reason of priority in time of issuance or negotiation thereof or otherwise, and for the uses and purposes in said Deed of Trust expressed.

*Fifth.* The tangible property described in and covered by said Deed of Trust is situated in the Counties of Twin Falls, Lincoln, Elmore, Cassia, Owyhee and Ada in the State of Idaho and elsewhere in the Southern Division of the District of Idaho. Said Deed of Trust was duly recorded in the office of the Recorder of Twin Falls County, State of Idaho, on August 2nd, 1910, and recorded in Book 14 of Mortgages at pages 54 to 88, inclusive, and the fees and taxes thereon paid. Said Deed of Trust was duly recorded in the office of the Recorder of Lincoln County, State of Idaho, on the 18th day of October, 1910, in Book 15 of Mortgages at pages 1 to 63, in-

clusive, and the fees and taxes thereon paid. Said Deed of Trust was duly recorded in the office of the Recorder of Elmore County, State of Idaho, on the 2nd day of September, 1913, in Book 39 of Mortgages at page 210, and the fees and taxes thereon paid. Said Deed of Trust was duly recorded in the office of the Recorder of Cassia County, State of Idaho, on the 13th day of September, 1913, in Book 7 of Mortgages at page 37, and the fees and taxes thereon paid. Said Deed of Trust was duly recorded in the office of the Recorder of Owyhee County, State of Idaho, on the 16th day of October, 1913, in Book 10 of Mortgages at page 250, and the fees and taxes thereon paid. Said Deed of Trust was duly recorded in the office of the Recorder of Ada County, State of Idaho, on the 30th day of September, 1913, in Book 74 of Mortgages, at pages 118-183 and the fees and taxes thereon paid.

*Sixth.* Thereafter and on or about the 21st day of June, 1911, said Great Shoshone and Twin Falls Water Power Company, being thereunto duly authorized by its Board of Directors and by its stockholders, duly made, executed and delivered to said The Trust Company of America and said James D. O'Neil, as Trustees, a certain instrument or indenture by way of supplemental mortgage bearing date June 21, 1911, a copy of which is hereto annexed and filed herewith marked Exhibit "B", to which your orator prays leave to refer with the same effect as if it were fully set forth in this Bill of Complaint. In and by said Supplemental Mortgage dated June 21, 1911,

said Great Shoshone and Twin Falls Water Power Company, further to secure the due and punctual payment of the principal and interest of all the bonds issued and at any time outstanding under the aforesaid Deed of Trust dated May 1, 1910, granted, bargained, sold, conveyed and confirmed unto the said The Trust Company of America and said James D. O'Neil, as Trustees, and their successor or successors, certain property therein set forth together with all the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion or reversions, remainder or remainders, rents, issues and profits thereof, to have and to hold as Trustees under the aforesaid Deed of Trust, dated May 1st, 1910, upon the trusts, terms and conditions, covenants and requirements set forth in said Deed of Trust, dated May 1st, 1910. All of the property covered by said Supplemental Mortgage dated June 21, 1911, was owned by said Great Shoshone and Twin Falls Water Power Company at the time of the execution of the aforesaid Deed of Trust, dated May 1st, 1910, or was acquired thereafter and was covered by said Deed of Trust, dated May 1st, 1910, and said Supplemental Mortgage, dated June 21, 1911, was executed by said Great Shoshone and Twin Falls Water Power Company as aforesaid by way of further assurance and in accordance with the covenants in said trust deed dated May 1, 1910. All of the property described in and covered by said Supplemental Mortgage dated June 21, 1911, is situated in the County of Lincoln, State of Idaho, and said

Supplemental Mortgage dated June 21, 1911, was duly recorded in the office of the Recorder of said Lincoln County, State of Idaho, on the 30th day of June, 1911, in Book 20 of Deeds at page 208.

*Seventh.* Said The Trust Company of America duly accepted the trusts created by and under said trust deed dated May 1, 1910, and said Supplemental Mortgage dated June 21, 1911, and became one of the trustees thereunder. Thereafter and in or about the month of February, 1912, said The Trust Company of America was in accordance with the laws of the State of New York duly merged into and became The Equitable Trust Company of New York, your orator, and your orator accordingly succeeded to all the rights, duties, powers and property of said The Trust Company of America under the said Deed of Trust dated May 1, 1910, and under the said Supplemental Mortgage dated June 21, 1911, and has become and now is Trustee thereunder and is now acting as such Trustee.

*Eighth.* On or about the 7th day of April, 1913, said Great Shoshone and Twin Falls Water Power Company, being thereunto duly authorized by its Board of Directors and by its stockholders, duly made, executed and delivered to your orator, as successor by merger to the hereinbefore mentioned The Trust Company of America, and to the aforesaid James D. O'Neil, as Trustees, a certain instrument, entitled "Supplemental Mortgage", bearing date April 7th, 1913, a copy of which is hereto annexed and filed herewith, marked Exhibit "C", to which



your orator prays leave to refer with the same effect as if it were fully set forth in this bill of complaint. In and by said Supplemental Mortgage said Great Shoshone and Twin Falls Water Power Company, further to secure the due and punctual payment of the principal and interest of all the bonds issued and at any time outstanding under the aforesaid Deed of Trust dated May 1, 1910 (Exhibit "A"), granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over unto your orator and said James D. O'Neil as Trustees and their successor or successors in the trust, certain property, real, personal and mixed, as fully set forth, described and enumerated in said Supplemental Mortgage, to have and to hold all and singular said properties, rights, privileges and franchises thereby conveyed or intended so to be, together with all and singular the reversions, remainders, rents, revenues, incomes, issues and profits thereof and the privileges and appurtenances then or thereafter belonging or in any wise appertaining thereto, in trust and upon the trusts and under the provisions set forth in the aforesaid Deed of Trust, dated May 1, 1910, and subject to all the terms, provisions and conditions therein contained. All of the property, real, personal and mixed, covered by said Supplemental Mortgage dated April 7, 1913, was owned by said Great Shoshone and Twin Falls Water Power Company at the time of the execution of the aforesaid Deed of Trust dated May 1, 1910, or was acquired thereafter and was covered by the aforesaid Deed of Trust, dated

May 1, 1910, and said Supplemental Mortgage dated April 7, 1913, was executed by said Great Shoshone and Twin Falls Water Power Company as aforesaid, by way of further assurance, and in accordance with the covenants in said Deed of Trust dated May 1, 1910.

*Ninth.* The tangible property described in and covered by said Supplemental Mortgage dated April 7, 1913, is situated in the Counties of Lincoln, Twin Falls, Elmore, Owyhee, Gooding, Minandoka, Ada and Cassia in the State of Idaho. Said Supplemental Mortgage, dated April 7, 1913, was duly recorded in the office of the Recorder of Lincoln County, State of Idaho, on the 3rd day of July, 1913, in Book 18 of Mortgages, page 285, and the fees and taxes thereon paid. Said Supplemental Mortgage, dated April 7th, 1913, was duly recorded in the office of the Recorder of Twin Falls County, State of Idaho, on the 15th day of July, 1913, in Book 23 of Mortgages, page 552, and the fees and taxes thereon paid. Said Supplemental Mortgage, dated April 7th, 1913, was duly recorded in the office of the Recorder of Owyhee County, State of Idaho, on the 25th day of September, 1913, in Book 10 of Mortgages, page 221, and the fees and taxes thereon paid. Said Supplemental Mortgage, dated April 7th, 1913, was duly recorded in the office of the Recorder of Elmore County, State of Idaho, on the 13th day of September, 1913, in Book 39 of Mortgages, page 279, and the fees and taxes thereon paid. Said Supplemental Mortgage, dated April 7th, 1913, was duly recorded in the office of the



Recorder of Gooding County, State of Idaho, on the 15th day of August, 1913, in Book 1 of Mortgages, page 123. Said Supplemental Mortgage, dated April 7th, 1913, was duly recorded in the office of the Recorder of Minandoka County, State of Idaho, on the 27th day of August, 1913, in Book 1 of Mortgages, page 269, and the fees and taxes thereon paid. Said Supplemental Mortgage, dated April 7th, 1913, was duly recorded in the office of the Recorder of Ada County, State of Idaho, on the 7th day of January, 1914, in Book 74 of Mortgages, page 396, and the fees and taxes thereon paid. Said Supplemental Mortgage, dated April 7th, 1913, was duly recorded in the office of the Recorder of Cassia County, State of Idaho, on the 28th day of July, 1913, in Book 6 of Mortgages, page 575, and the fees and taxes thereon paid.

Your orator duly accepted the trusts created by said Supplemental Mortgage dated April 7, 1913, and is advised and therefore avers that all of the bonds issued and outstanding under the said trust deed dated May 1, 1910, are entitled to the benefit of the security of said Supplemental Mortgage dated April 7, 1913, as well as of said Trust Deed dated May 1, 1910, and the above mentioned Supplemental Mortgage dated June 21, 1911.

*Tenth.* After the execution and delivery of said Deed of Trust, dated May 1, 1910, said Great Shoshone and Twin Falls Water Power Company duly made and executed bonds under said Deed of Trust to the aggregate principal amount of Two Million

Two Hundred and Thirty Thousand Dollars (\$2,230,000), all of which bonds were duly authenticated by the certificate of The Trust Company of America as Trustee or your orator as successor Trustee endorsed thereon, as provided in said bonds and Deed of Trust, and all of said bonds were duly certified, and all of said bonds as your orator is informed and believes, were duly issued by said Great Shoshone and Twin Falls Water Power Company for a valuable consideration and in accordance with law and with the provisions of said Deed of Trust; and all of the bonds so issued are now outstanding in the hands of divers persons and corporations who are now the owners and holders thereof for value, and your orator is advised and therefore avers that said bonds are now in all respects valid and outstanding obligations of the Great Shoshone and Twin Falls Water Power Company and are entitled to all the benefits of said Deed of Trust and of the above mentioned Supplemental Mortgages dated June 21, 1911, and April 7th, 1913, respectively.

*Eleventh.* Your orator further shows that on the second day of November, 1914 (the first day of said month being Sunday and a legal holiday), there fell due and became payable an instalment of interest upon the bonds issued under and secured by said Deed of Trust and said Supplemental Mortgages and now outstanding as aforesaid, which instalment amounted to the sum of Fifty-five Thousand Seven Hundred and Fifty Dollars (\$55,750). On said 2nd day of November, 1914, certain of the coupons ap-

pertaining to said bonds and maturing said day, evidencing the instalment of interest due and payable on said day, were duly presented for payment at the banking house of your orator in the City of New York, as successor by merger to The Trust Company of America where, by their terms, said coupons were payable, and payment was then and there duly demanded, and the surrender of said coupons duly tendered; but payment thereon was wholly refused and said Great Shoshone and Twin Falls Water Power Company wholly defaulted in the payment of said coupons and in the payment of the semi-annual instalment of interest due November 2, 1914, on all of the bonds secured by said Deed of Trust and Supplemental Mortgages and now outstanding, and has ever since wholly failed, omitted and refused to pay or cause to be paid said semi-annual instalment of interest or any part thereof and has wholly failed, omitted and refused to pay or cause to be paid the coupons maturing November 2, 1914, and duly presented for payment as aforesaid, or any of them or any part thereof; and said Great Shoshone and Twin Falls Water Power Company has therein and thereby wholly made default in the covenants and conditions of said Mortgage.

*Twelfth.* Your orator is informed and believes and therefore avers that on or about the 2nd day of November, 1914, the defendant Guy I. Towle filed his bill of complaint in this Court against the defendant Great Shoshone and Twin Falls Water Power Company, praying for the appointment of a receiver or

receivers for said Company and its property; that thereupon and on or about the 2nd day of November, 1914, this Court by an order made that day appointed the defendant William T. Wallace, Receiver of Great Shoshone and Twin Falls Water Power Company and of all of its property, including the property subject to the lien of said Deed of Trust dated May 1, 1910, and of said Supplemental Mortgages dated June 21, 1911, and April 7, 1913; and that said William T. Wallace duly qualified as such Receiver and entered upon the possession of said property and is now in possession of all of the property of said Great Shoshone and Twin Falls Water Power Company, including the property subject to the lien of said Deed of Trust dated May 1, 1910, and of said Supplemental Mortgages dated June 21, 1911, and April 7, 1913. Your orator further alleges that the said Receiver has wholly failed to pay said instalment of interest and said coupons of the said Great Shoshone and Twin Falls Water Power Company due November 2, 1914, and has wholly made default in respect thereto.

*Thirteenth.* Your orator further shows that in and by said Deed of Trust dated May 1, 1910, it is provided that upon the election of the holders of a majority in interest of the bonds thereby secured at any time outstanding, the Trustees thereunder or either of them may be removed from the Trusteeship thereunder upon notice to that effect to the Trustees and the Great Shoshone and Twin Falls Water Power Company given by an instrument or concurrent



instruments in writing signed by the holders of such an amount of bonds, with affidavits of ownership thereto annexed. Your orator is informed and believes and therefore avers that by virtue of and pursuant to such provisions of said Deed of Trust, the owners and holders of all of the outstanding bonds secured by said Deed of Trust did heretofore and in the month of February, 1915, give notice in writing to your orator and said James D. O'Neil and to said Great Shoshone and Twin Falls Water Power Company that they had removed and did thereby remove said James D. O'Neil as Trustee and from the Trusteeship under said Deed of Trust, which notice in writing your orator is informed and believes and therefore alleges was signed by the holders and owners of all the outstanding bonds issued under and secured by said Deed of Trust and to which there were annexed affidavits of the ownership of all of said bonds by the signers of said instruments in writing; and that thereupon said James D. O'Neil was removed as Trustee under said Deed of Trust and the mortgages supplemental thereto and from the Trusteeship thereunder, and ceased to be a Trustee thereunder. And your orator further avers and alleges that thereupon your orator became and now is the sole Trustee under said Deed of Trust dated May 1, 1910, and said Supplemental Mortgages dated June 21, 1911, and April 7, 1913, and became and now is vested with and should be entitled to exercise all the rights, powers, property, estates and trusts granted to or conferred jointly upon the two original

Trustees thereunder, as provided in the said Deed of Trust dated May 1, 1910, and especially in Section 1 of Article Thirteen thereof.

*Fourteenth.* Your orator further shows to the Court that it is provided in and by the terms of said Deed of Trust dated May 1, 1910, that the Trustees may, and shall upon the request of one-tenth in interest of the owners and holders of the bonds then outstanding under said Deed of Trust, commence and prosecute all such proceedings at law or in equity in addition to those specifically mentioned in said Deed of Trust, as they may be advised is necessary or proper to protect the mortgage security and the rights of the holders of the bonds issued thereunder. Your orator has been requested by persons owning all of the bonds issued and secured by said Deed of Trust dated May 1, 1910, and said Supplemental Mortgages dated June 21, 1911, and April 7, 1913, and now outstanding, to enforce their rights in the premises and to institute this present suit by the filing of this bill of complaint for the foreclosure of said Deed of Trust and Supplemental Mortgages on all of the property subject to them or either of them.

*Fifteenth.* Your orator further alleges that no proceedings at law or suits in equity have been taken or commenced by your orator save this suit, nor, as your orator is informed and believes, by any holder of any of the bonds secured by said Deed of Trust or Supplemental Mortgages or any of the coupons thereto pertaining, to enforce the payment of the sums covenanted to be paid by the Great Shoshone



and Twin Falls Water Power Company under the terms of said Deed of Trust or said bonds or coupons or otherwise to enforce their rights thereunder.

*Sixteenth.* Your orator is informed and believes, and therefore avers that at the time of the execution and delivery of said Deed of Trust, Exhibit "A", said Great Shoshone and Twin Falls Water Power Company was the owner of property of various kinds, which was referred to and generally described in and subjected to the lien of said Deed of Trust which was not specifically described therein; and also that since the date of the execution and delivery of said Deed of Trust dated May 1, 1910, certain other property, real, personal and mixed, and rights and interests (other than as specified and enumerated in said Supplemental Mortgages dated June 21, 1911, and April 7, 1913) have become subject to the lien of said Deed of Trust by reason of the acquisition thereof by said Great Shoshone and Twin Falls Water Power Company and under and pursuant to and by reason of the terms of said Deed of Trust. Your orator is not advised as to the exact character, description and extent of such other property, rights and interests as have become subject to said Deed of Trust, and therefore avers that for the proper protection and enforcement of the rights of your orator and of the holders of the bonds and coupons issued and outstanding under and secured by said Deed of Trust, it is necessary that Great Shoshone and Twin Falls Water Power Company and William T. Wallace as Receiver thereof as aforesaid, account to your ora-

tor in this suit for all the property, rights and interests of any and every kind owned or acquired by it or by him as such Receiver, and that the said property, rights and interests or so much thereof as are subject to said Deed of Trust or Supplemental Mortgages be so declared and decreed by this Court.

*Seventeenth.* By instrument dated June 15th, 1911, said The Trust Company of America and the said James D. O'Neil, as Trustees as aforesaid, released from the lien of said Deed of Trust, dated May 1st, 1910, the following described property situated in Lincoln County, State of Idaho, to-wit:

*All* that certain lot or piece of ground situate in Lot No. Two (2), Section Eleven (11), Township Seven (7) South, Range Thirteen (13) East of the Boise Meridian, bounded and described as follows:

*Beginning* at a point S. 27 degrees 45' W., 823.7 feet from the quarter section corner between Sections 2 and 11, T. 7 S., R. 13 E. B. M.

Thence N. 80 degrees 28' W., 949.5 feet; thence South 101.2 feet; thence S. 86 degrees 42' E. 937.9 feet to the point of beginning, comprising 1.08 acres, all in Lot No. 2, T. 7 S. R., 13 E. B. M.

*Also* a right of way for a road in Lincoln County, State of Idaho, the center line of said road being more particularly described as follows:

*Commencing* at a point which bears South 1° 23' West 1320.4 feet from the quarter corner between Sections 2 and 11, Township 7 South of Range 13 East of Boise Meridian; thence North

26° 24' West 263 feet to a point; thence North 28° 58' West 400 feet to a point; thence North 63° 47' West 36.9 feet to a point on the rim rock, which bears South 27° 37' West 810.7 feet from the quarter corner between Sections 2 and 11, Township 7 South of Range 13 East of Boise Meridian. Being the same right of way which Russell N. Ingraham and wife, by agreement dated August 18th, 1909, and recorded in the Recorder's office of Lincoln County, in Book 7 of Deeds at page 427, granted and conveyed unto William S. Kuhn and which the said William S. Kuhn granted and conveyed unto the Great Shoshone and Twin Falls Water Power Company.

*Together* with all and singular, the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

The property heretofore in this paragraph described is the only property which has been released from the lien of said Deed of Trust, and all other property of the kind or nature described in said Deed of Trust and owned by Great Shoshone and Twin Falls Water Power Company at the time of the execution and delivery of said Deed of Trust or acquired by said Great Shoshone and Twin Falls Water Power Company since that time is subjected to the lien of said Deed of Trust and all of the \$2,230,000 in principal amount of bonds issued and outstanding, as aforesaid, are entitled to the benefit of such lien.

*Eighteenth.* The amount in controversy herein exceeds the sum of Five Thousand Dollars (\$5,000), exclusive of interest and costs.

*Nineteenth.* Your orator further avers that upon application by your orator by petition filed the 31st day of March, 1915, this Court has granted leave to your orator, by order dated the 31st day of March, 1915, to file this bill of complaint and to make said William T. Wallace as Receiver as aforesaid a party defendant herein.

*Twentieth.* Your orator is further informed and believes and therefore alleges that the defendant Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, claims some interest in the property herein referred to by virtue of a judgment recovered in the United States Court for the District of Idaho, which interest however is subject to the interest of your orator therein as trustee under the said Deed of Trust and Supplemental Mortgages.

*In consideration whereof* and for as much as your orator is remediless in the premises according to the rules of the common law and can have adequate relief only in a Court of Equity where matters of this nature are properly cognizable and relievable, your orator prays this Honorable Court:

(1) That the said defendants herein named may separately and severally make answer unto all and singular the matters hereinbefore stated and charged and that as fully in every respect as if the same were here again repeated and they thereunto particularly

interrogated, but not under oath, their answers under oath being hereby expressly waived.

(2) That an account may be taken of all the property, rights and interests subject to the lien of said Deed of Trust, dated May 1, 1910 (Exhibit "A") or to said Supplemental Mortgage dated June 21, 1911 (Exhibit "B"), or to said Supplemental Mortgage dated April 7, 1913 (Exhibit "C"), and that said Deed of Trust and said Supplemental Mortgages may be decreed and established as a valid and existing lien upon all of said property superior to the lien or interest of any of the defendants herein.

(3) That the defendant Great Shoshone and Twin Falls Water Power Company may be decreed to pay within a short date, to be fixed by the Court, to the holders of the bonds and coupons secured by said Deed of Trust dated May 1, 1910, or to your orator as Trustee for such holders the amount of defaulted interest thereon and all moneys now due or to become due and payable under and by virtue of said Deed of Trust or of said bonds and coupons, together with a sum sufficient to pay the costs, expenses and allowances of this suit.

That in default thereof, all and singular the said property, rights and interests conveyed, transferred, mortgaged or pledged by and described or referred to in said Deed of Trust, dated May 1, 1910, or said Supplemental Mortgage dated June 21, 1911, or said Supplemental Mortgage dated April 7, 1913, and all other property, rights and interests declared to be subject to the lien thereof may be sold under a decree



of this Honorable Court, and that the defendant Great Shoshone and Twin Falls Water Power Company and all persons claiming under or through it and all the other defendants herein may be forever barred and foreclosed of and from any equity or redemption of or claim of and in such property, rights and interests. That the proceeds of such sale may be brought into this Court to be administered by it as may be equitable and proper; that an account may be taken of the amount due on said bonds and coupons and that, in case of the insufficiency of such proceeds or of such portions thereof as may be applicable thereto to pay in full the amount so found to be due, with costs, expenses and allowances, and that a judgment may be rendered in this cause for such deficiency against the defendant Great Shoshone and Twin Falls Water Power Company.

(4) That pending this suit a Receiver or Receivers be appointed with the usual powers and duties of Receivers in like cases, of all the property, rights and interests conveyed, transferred, mortgaged or pledged in and by said Deed of Trust, dated May 1, 1910, or said Supplemental Mortgage dated June 21, 1911, or said Supplemental Mortgage dated April 7, 1913, and of all the rents, revenues, issues and profits thereof, or that the present receivership in the hereinbefore mentioned suit pending in this Court between Guy I. Towle, Complainant, and Great Shoshone and Twin Falls Water Power Company be extended to cover said property; and that such directions may be made with respect to such receivership



as may be equitable and proper; and that pending this suit a writ of injunction may be issued out of and under the seal of this Honorable Court, directing, commanding, enjoining and restraining the said defendant Great Shoshone and Twin Falls Water Power Company, its officers, directors and agents and all other persons whomsoever from interfering with, transferring, selling, attaching, levying upon, encumbering or otherwise disposing of any of the property conveyed, transferred, mortgaged or pledged in and by said Deed of Trust, dated May 1, 1910, or said Supplemental Mortgage dated June 21, 1911, or said Supplemental Mortgage dated April 7, 1913, or from in any way interfering with the possession or control of the property under the control of said Receiver or Receivers.

(5) That your orator may have such other and further relief in the premises as the nature and circumstances of the case may require and as to this Honorable Court may seem just and equitable.

May it please your Honors to grant unto your orator a writ or writs of subpœna to be directed to the said defendants Great Shoshone and Twin Falls Water Power Company, William T. Wallace as Receiver of Great Shoshone and Twin Falls Water Power Company, Guy I. Towle and Carl J. Hahn as administrator of the estate of Harry M. King, deceased, commanding them and each of them, at a certain time and under a certain penalty therein to be named, to be and appear before your Honors in this Honorable Court, then and there severally to

answer all and singular the matters aforesaid, but not under oath, answer under oath being hereby expressly waived, and to stand to, abide by and perform such further orders and decrees as to your Honors may seem meet.

And your orator will ever pray, etc.

THE EQUITABLE TRUST COMPANY OF NEW  
YORK,      By Lyman Rhoades, Vice-President,  
Complainant.

MURRAY, PRENTICE & HOWLAND,  
SULLIVAN & SULLIVAN,  
Solicitors for Complainant.

CHARLES P. HOWLAND,  
W. E. SULLIVAN,  
L. L. SULLIVAN,  
Of Counsel.

(Duly verified.)

*EXHIBIT A.*

DEED OF TRUST  
GREAT SHOSHONE AND TWIN FALLS  
WATER POWER COMPANY

TO  
THE TRUST COMPANY OF AMERICA

AND  
JAMES D. O'NEIL

TRUSTEES

May 1st, 1910.

\$10,000,000.

THIS INDENTURE

*Made* and entered into this first day of May in the year of our Lord one thousand nine hundred and ten

(and intended to bear said date, although actually executed and delivered on the 21st day of July, 1910) by and between the *Great Shoshone and Twin Falls Water Power Company*, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, hereinafter called the "Company", party of the first part, and *The Trust Company of America*, of the City of New York, State of New York, a corporation duly organized and existing under and by virtue of the laws of the State of New York, hereinafter called the "Trust Company", and James D. O'Neil, of the City of Pittsburgh, County of Allegheny and State of Pennsylvania, parties of the second part, both hereinafter called the "Trustees":

*Whereas*, the Company has full power and authority under its charter and the laws of the State of Delaware and the laws of the State of Idaho to borrow money for the purposes herein provided and to make, issue and dispose of the bonds hereinafter described and to secure the payment of the principal sums of and interest upon all of said bonds by mortgage or deed of trust as hereinafter provided; and,

*Whereas*, the Company has fully complied with the laws of the State of Idaho concerning foreign corporations and had and has authority to acquire the properties hereby conveyed and has all the rights, powers and privileges under the laws of the State of Idaho of a like domestic corporation therein; and,

*Whereas*, it is necessary for the Company to borrow money for its general purposes and business, and

it is and will be necessary for it, from time to time, so to do and to borrow money for the purposes for which the bonds authorized to be issued hereunder are authorized to be certified and delivered; and,

*Whereas*, the stockholders of the Company have duly consented to the issuance, from time to time, of the bonds authorized to be issued hereunder, and the execution of a mortgage or deed of trust to the Trustees hereunder, upon all or any part of the property of the Company, for the purpose of securing the payment of the principal and interest of said bonds; and,

*Whereas*, the Board of Directors of the Company, at a meeting duly held, has authorized the issuance and delivery of the bonds hereinafter described, upon the terms herein provided, and that for the purpose of securing the same, with interest thereon, the Company, it was resolved by said Board of Directors, should execute unto the Trustees herein named a mortgage or deed of trust upon the properties herein described and hereby conveyed, and that said bonds might, from time to time, be issued to the aggregate amount of Ten Million (\$10,000,000) Dollars, at par, in their principal sums; and,

*Whereas*, it was also resolved by said Board of Directors that said bonds should and might be issued in the denominations of Twenty-five Thousand (\$25,000) Dollars (in the form of registered bonds), and One Thousand (\$1,000) Dollars and Five Hundred (\$500) Dollars (in the form of coupon bonds, subject

to registration as to the payment of their principal sums) and that the form of bonds of the denomination of One Thousand (\$1,000) Dollars, with the coupons thereto attached and the Trustee's certificate to be endorsed thereon, should be substantially in words and figures as follows, to-wit:

UNITED STATES OF AMERICA,

STATE OF DELAWARE.

No. . . . . \$1,000.

No. . . . . \$1,000.

GREAT SHOSHONE AND TWIN FALLS

WATER POWER COMPANY

*FIRST MORTGAGE FIVE PER CENT.*

*GOLD BOND*

*For value received*, the Great Shoshone and Twin Falls Water Power Company, a corporation organized and existing under the laws of the State of Delaware, promises to pay to the bearer of this bond, or in case this bond be registered, to the registered holder hereof One Thousand (\$1,000) Dollars in gold coin, lawful money of the United States of America, of the present standard of weight and fineness, on the first day of May in the year Nineteen Hundred and Fifty (1950) at the banking house of The Trust Company of America in the City of New York, and to pay interest thereon semi-annually in like gold coin at the rate of five per centum (5%) per annum, on the first day of May and the first day of November in each year from May 1st, 1910, until said principal sum is paid, upon presentation and surrender of the coupons hereto attached at said banking house of The



Trust Company of America in the City of New York as they severally become due and payable.

Both principal and interest of this bond are payable without deduction for any United States, State, County, Municipal or other tax or taxes which the Great Shoshone and Twin Falls Water Power Company may be required to pay, deduct or retain therefrom under or by reason of any present or future law. and the Great Shoshone and Twin Falls Water Power Company hereby agrees to pay all such tax or taxes so required to be paid, deducted or retained by it.

This bond is one of an issue of coupon bonds and registered bonds of said Great Shoshone and Twin Falls Water Power Company of like date, bearing interest at the rate of five per centum (5%) per annum, and issued or to be issued to the aggregate amount, in their principal sums, of Ten Million (\$10,000,000) Dollars, under the provisions of and equally secured by a Mortgage or Deed of Trust of the obligor herein, bearing even date herewith, executed and delivered by it to said The Trust Company of America, a corporation duly organized and existing under the laws of the State of New York, and James D. O'Neil, of Pittsburgh, Pennsylvania, as Trustees, covering all the properties, rights and franchises of the Great Shoshone and Twin Falls Water Power Company set forth in said Mortgage or Deed of Trust, to which reference is hereby made for a description of the properties, rights and franchises mortgaged, and the nature and extent of the

security, the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

If default shall be made in the payment of any installment of interest upon this bond, or in the performance of certain covenants and agreements in said Mortgage or Deed of Trust, then the principal of this bond may be made due and payable on the conditions and in the manner and at the times provided in said Mortgage or Deed of Trust.

This bond shall pass by delivery unless registered in the owner's name on the books of the Great Shoshone and Twin Falls Water Power Company at the office of its Registrar of bonds in the City of Pittsburgh, Pennsylvania, in the manner provided in said Mortgage or Deed of Trust, such registry being noted on the bond by said Registrar, after which no transfer thereof shall be valid unless made on said books by the registered owner or his attorney, authorized in writing, and similarly noted on the bond; but the same may be discharged from registry by being in like manner transferred to bearer, after which it shall be transferable by delivery as before. The registration of this bond shall not restrain or affect the negotiability of the coupons belonging hereto by delivery merely.

This bond shall continue subject to successive registrations and transfers to bearer, as aforesaid, at the option of the owner.

This bond is subject to redemption as provided in

said Deed of Trust at any interest paying period by payment of the unpaid accrued interest hereon and the principal hereof, together with a premium of five per centum (5%) upon such principal sum.

No recourse shall be had for the payment of the principal of or interest upon this bond against any stockholder, director or officer of the Great Shoshone and Twin Falls Water Power Company, whether by any statute or by the enforcement of any assessment or otherwise howsoever.

This bond shall not be valid or obligatory for any purpose until it shall have been authenticated by the signature of The Trust Company of America, Trustee, or its successor in the trusts created by said Deed of Trust, to the certificate endorsed hereon.

It is further hereby recited and covenanted by said Great Shoshone and Twin Falls Water Power Company to and with the holder of this bond, that all conditions precedent, acts, steps and things necessary to the legal issuance of this bond have been fully done and performed, and that this bond is a legal and valid obligation of said Great Shoshone and Twin Falls Water Power Company.

*In Witness Whereof*, the Great Shoshone and Twin Falls Water Power Company has caused this bond to be signed by its President or Vice President, and its corporate seal to be hereto affixed, attested by its Secretary or Assistant Secretary, and the interest coupons hereto attached to be executed with the engraved or lithographed fac-simile of the signature of

its Treasurer, and this bond to be dated the first day of May, A. D. 1910.

GREAT SHOSHONE AND TWIN FALLS WATER  
POWER COMPANY, By.....  
President.

Attest:

.....

Secretary.

FORM OF COUPON

No..... \$25.00

The Great Shoshone and Twin Falls Water Power Company, a Delaware corporation, will pay to the bearer on the first day of....., A. D. 19...., at the banking house of The Trust Company of America, in the City of New York, *Twenty-five Dollars*, in gold coin, lawful money of the United States of America, of the present standard of weight and fineness, without deduction for taxes, as specified in its First Mortgage Five Per Cent. Gold Bond, dated May 1st, 1910, No....., being the six months' interest then due on said bond.

.....

Treasurer.

TRUSTEE'S CERTIFICATE.

This is to certify that the within bond is one of the bonds issued under and described in the within mentioned Mortgage or Deed of Trust to the undersigned and James D. O'Neil, as Trustees, dated May 1st, 1910.

THE TRUST COMPANY OF AMERICA, Trustee.

By.....

Vice President.

Date of Registry	In Whose Name Registered	Registrar
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.....	.....	.....
.....	.....	.....
.....	.....	.....

Said bonds of the denomination of Five Hundred (\$500) Dollars each, with the coupon thereto attached and the Trustee's certificate to appear thereon, it was resolved, should be like the foregoing except as to the amounts of their principal sums and the amounts of their coupons, the coupons attached thereto being in the sum of Twelve and 50/100 (\$12.50) Dollars each.

Said bonds of the denomination of Twenty-five Thousand (\$25,000) Dollars each, and the Trustee's certificate to be endorsed thereon, it was also provided, should be substantially in words and figures as follows, to-wit:

UNITED STATES OF AMERICA,  
STATE OF DELAWARE.

No. .... \$25.00

GREAT SHOSHONE AND TWIN FALLS  
WATER POWER COMPANY.

*FIRST MORTGAGE FIVE PER CENT.*

*GOLD BOND.*

*For value received*, the Great Shoshone and Twin Falls Water Power Company, a corporation organized and existing under the laws of the State of Delaware, promises to pay to ..... or registered assigns, Twenty-five Thousand (\$25,-



000) Dollars, in gold coin, lawful money of the United States of America, of the present standard of weight and fineness, on the first day of May, in the year Nineteen Hundred and Fifty (1950) at the banking house of The Trust Company of America in the City of New York, and to pay interest thereon semi-annually in like gold coin at said banking house at the rate of five per centum (5%) per annum, on the first day of May and the first day of November in each year from May 1st, 1910, until said principal sum is paid.

Both principal and interest of this bond are payable without deduction for any United States, State, County, Municipal or other tax or taxes which the Great Shoshone and Twin Falls Water Power Company may be required to pay, deduct or retain therefrom under or by reason of any present or future law, and the Great Shoshone and Twin Falls Water Power Company hereby agrees to pay all such tax or taxes so required to be paid, deducted or retained by it.

This bond is one of an issue of coupon bonds and registered bonds of said Great Shoshone and Twin Falls Water Power Company of like date, bearing interest at the rate of five per centum (5%) per annum, and issued or to be issued to the aggregate amount, in their principal sums, of Ten Million (\$10,000,000) Dollars, under the provisions of and equally secured by a Mortgage or Deed of Trust of the obligor herein, bearing even date herewith, executed and delivered by it to said The Trust Company of America, a cor-

poration duly organized and existing under the laws of the State of New York, and James D. O'Neil, of Pittsburgh, Pennsylvania, as Trustees, covering all the properties, rights and franchises of the Great Shoshone and Twin Falls Water Power Company set forth in said Mortgage or Deed of Trust, to which reference is hereby made for a description of the properties, rights and franchises mortgaged, and the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

If default shall be made in the payment of any installment of interest upon this bond, or in the performance of certain covenants and agreements in said Mortgage or Deed of Trust, then the principal of this bond may be made due and payable on the conditions and in the manner and at the times provided in said Mortgage or Deed of Trust.

This bond is subject to redemption as provided in said Deed of Trust at any interest paying period by payment of the unpaid accrued interest hereon and the principal hereof, together with a premium of five per centum (5%) upon such principal sum.

No recourse shall be had for the payment of the principal of or interest upon this bond against any stockholder, director or officer of the Great Shoshone and Twin Falls Water Power Company, whether by any statute or by the enforcement of any assessment or otherwise howsoever.

This bond, as provided in said Deed of Trust, may be exchanged for an equal aggregate amount in their principal sums of the coupon bonds therein described, but which may be registered as to the payment of their principal sums.

This bond shall not be valid or obligatory for any purpose until it shall have been authenticated by the signature of The Trust Company of America, Trustee, or its successor in the trusts created by said Deed of Trust, to the certificate endorsed hereon.

It is further hereby recited and covenanted by said Great Shoshone and Twin Falls Water Power Company to and with the holder of this bond, that all conditions precedent, acts, steps and things necessary to the legal issuance of this bond have been fully done and performed, and that this bond is a legal and valid obligation of said Great Shoshone and Twin Falls Water Power Company.

*In witness whereof*, the Great Shoshone and Twin Falls Water Power Company has caused this bond to be signed by its President or Vice President, and its corporate seal to be hereto affixed, attested by its Secretary or Assistant Secretary, and this bond to be dated the first day of May, A. D. 1910.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY.

By.....

President.

Attest:

.....

Secretary.

TRUSTEE'S CERTIFICATE.

This is to certify that the within bond is one of the bonds issued under and described in the within mentioned Mortgage or Deed of Trust to the undersigned and James D. O'Neil, as Trustees, dated May 1st, 1910.

THE TRUST COMPANY OF AMERICA, Trustee.

By.....

Vice President.

Said bonds of the denomination of One Thousand (\$1,000) Dollars each and Five Hundred (\$500) Dollars each, it was also resolved, should be issued as coupon bonds and that the same should be subject to registration as to the payment of their principal sums, as hereinafter provided, and the same are hereinafter referred to as "coupon" bonds, where any distinction is desired to be made between such bonds and the registered bonds provided to be issued hereunder.

Said bonds of the denomination of One Thousand (\$1,000) Dollars each are numbered, or shall be numbered, consecutively from M-1 upwards; and said bonds of the denomination of Five Hundred (\$500) Dollars each are numbered, or shall be numbered, consecutively from D-1 upwards.

Said bonds of the denomination of Twenty-five Thousand (\$25,000) Dollars each are numbered, or shall be numbered, consecutively from 1 (one) upwards, and the same, it was also resolved, should be issued only as registered bonds, without coupons at-

tached thereto, and the bonds of said denomination are hereinafter referred to as "registered" bonds where any distinction is desired to be made between the same and the coupon bonds provided to be issued hereunder; and,

*Whereas*, it was also resolved that such registered bonds, or any of them, should be exchangeable under the terms of this Deed of Trust, as hereinafter provided, for an equal aggregate amount, at par, in their principal sums of the coupon bonds authorized to be issued hereunder; and,

*Whereas*, it was also resolved that the bonds of said several denominations might, from time to time, be issued agreeably to the terms and provisions of this indenture in such lots or amounts of any one or more of said denominations of bonds as the Company might, from time to time, request, to the aggregate amount, at par, in their principal sums, of Ten Million (\$10,000,000) Dollars, and that any or all of said bonds should be subject to redemption upon the terms therein and hereinafter provided; and,

*Whereas*, it was also resolved that coupons should be attached to the coupon bonds to be issued hereunder and that such coupons should be in proper amounts for the several semi-annual installments of interest to accrue upon the bonds to which the same belong to the date of maturity of such bonds, and that the coupons attached to any bond should refer to the number of the bond to which such coupons belong, and that said coupons should be signed with the en-



graved or lithographed fac-simile of the signature of the present or any future Treasurer of the Company; and,

*Whereas*, it was also resolved that all or any part of the bonds to be issued hereunder should be signed in the name of the Company by the present or any future President or Vice-President of the Company and should have affixed thereto the corporate seal of the Company, attested by the signature of the present or any future Secretary or Assistant Secretary of the Company; and,

*Whereas*, the said The Trust Company of America is authorized by its charter and the laws of the State of New York to receive and execute the trusts created by this indenture, and said Trust Company and the said James D. O'Neil have agreed to accept and execute the same:

*Now, therefore, this indenture witnesseth*, That the said Great Shoshone and Twin Falls Water Power Company, party of the first part hereto, for and in consideration of the promises and the sum of One (\$1.00) Dollar in hand paid to it by the parties of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and in order to secure the due and punctual payment of the principal and interest of all of the bonds issued and at any time outstanding hereunder hath granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over and by these presents doth grant, bargain, sell, alien, remise, release, convey, confirm,

assign, transfer and set over unto the said The Trust Company of America and James D. O'Neil, as Trustees, and their successor or successors in the trusts hereby created, all and singular the property of the Company described as follows, to-wit:

(There is here omitted a specific description of certain property included in the amendments to the bill of complaint.)

*Parcel Five.* And, generally, all other rights and property of the Company, whether now owned or hereafter acquired, and whether real, personal or mixed, in or near the Snake River in the State of Idaho, and used, or intended so to be, or designed to be used for, or in connection with the development of hydro-electric power and the transmission, conversion and distribution thereof, including all of its water permits or appropriations for or of the waters of Snake River, or tributaries thereof, in the State of Idaho, and all rights and interests of the Company now owned or hereafter acquired in any such permits or appropriations, together with all of its power plants, dams, reservoirs, flumes, canals, tunnels, raceways, controlling works, reservoirs, and other appurtenances thereto, and all rights and interests of the Company, whether now owned or hereafter acquired, in or to any of the same, including water frontage or power sites, and all its machinery, lines, buildings or other improvements, weirs, water wheels, generators, dynamos, switch boards, transformers, electrical engines or other machinery and appliances connected or to be connected with any of

the property or properties herein described or used in connection with any of its hydro-electric power plant or plants, stations or sub-stations or electric light plant or plants, and all other real estate, whether now owned or hereafter acquired and used, or to be used, in connection with any of the foregoing properties of the Company, and including all rights of way, easements and appurtenances, whether now owned or hereafter acquired, connected with or appurtenant to any of the property hereby conveyed, or intended so to be, and all real estate hereafter acquired by the Company for power houses or developing station purposes or for sub-stations, together with all improvements thereon, or for offices, stores or dwelling houses for the use of the Company or its employees, wheresoever the same may be located, together with all improvements thereon; and all its tools, implements, equipments, supplies, materials, and outfits; and all its transmission and electric distributing lines, poles, wires, cables, conduits, subways, manholes, fixtures, fittings or other appurtenances, whether now owned or hereafter acquired or constructed by the Company for use in connection with its business, or extending from or connected with any such power plant or plants owned now or hereafter by the Company, wheresoever the same may be located, and whether now owned or hereafter acquired or constructed by it, and wheresoever any such properties may be located, expressly including herein all such properties of the Company in the Counties of Twin Falls and

Lincoln, State of Idaho, and in the Towns of Twin Falls, Kimberly, Filer, Buhl, Hollister and Hansen, in the County of Twin Falls, and in the Towns of Jerome, Wendell, Gooding and Hagerman, in the County of Lincoln, State of Idaho, and all and sundry its State, County or Municipal franchises, permits or licenses for the construction or operation of any part of its system, whether the same are now owned or shall hereafter be acquired, and all its rights, howsoever acquired, in the streets of any municipality or municipalities in which the Company is now or hereafter may be engaged in the furnishing of light or power, and all its rights, whether now owned or hereafter acquired, in, over and under all public roads, streets or highways, for the transmission and distribution of electric power for any purpose whatsoever; and all the tolls, incomes, and revenues of the Company to be derived from any of the foregoing property hereby conveyed or intended so to be.

Together with all and singular the buildings, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversions, remainders, rents, issues and profits thereof, and, also, all the estate, right, title and interest, property, possession, claim and demand whatsoever, as well in law as in equity, of said Great Shoshone and Twin Falls Water Power Company, of, in and to the same and each and every part and parcel thereof, with the appurtenances, and also all improvements.



*To have and to hold* all and singular said plants, works and other property, and rights, privileges and franchises hereby conveyed or intended so to be, together with all and singular the reversions, remainders, rents, revenues, incomes, issues and profits thereof and privileges and appurtenances now or hereafter belonging or in anywise appertaining thereto, unto the Trustees and their successors and assigns, in fee simple, forever.

*In trust nevertheless*, and upon the trusts and under the provisions hereinafter expressed concerning the same, for the equal and *pro rata* benefit of all holders of bonds duly issued under this mortgage, and to secure the payment of the principal and interest of all such bonds according to their terms and the terms of this mortgage, without preference or priority of one bond over another by reason of priority in time of issuance or negotiation thereof or otherwise, and for the uses and purposes hereinafter expressed; *Provided, however*, that if the Company shall pay the principal and interest of all of said bonds according to their terms and the terms of this mortgage, and the reasonable compensation and lawful charges of the Trustees, all the estate, title and interest of the Trustees in and to all the property subject thereto, and all the liens thereon, by reason of this mortgage, shall thereupon cease and determine; and provided further, that until default shall be made by the Company in the payment of the principal of or interest upon any of said bonds hereby secured, or until default shall be made in respect of



some act or thing, obligation or agreement herein required to be done, performed or kept by it, and at all times while there shall not exist or continue any such default, the Company shall be permitted, subject to the conditions herein provided, to possess, operate, use and enjoy the said mortgaged property, and the appurtenances, and the said rights, privileges and franchises, and to take and use the incomes, revenues, rents, issues and profits thereof, and to enjoy the incomes arising from the property hereby pledged or to be pledged hereunder or subject to the lien hereof, and to have, exercise and enjoy all the rights, powers, properties and estates hereunder or hereby reserved to the Company, the party of the first part hereto (excepting, nevertheless, that at all times all certificates of stock for the shares of the capital stock in each and every corporation at any time subject hereto, and all bonds and other obligations of each and every sub-company or other corporation at any time subject hereto and all other securities and trust funds shall remain in possession of the Trust Company, except as hereinafter otherwise provided) as if this mortgage had not been made; and provided further, that said mortgaged property and franchises and all other property at any time subject hereto shall be held by the Trustees and their successors upon the trusts and for the uses and purposes herein recited or contained, and the said bonds, together with the coupons thereto belonging, shall be issued by the Company and held by the several owners thereof, and said mortgaged property and franchises and all other

property at any time subject hereto shall be held by the Trustees hereunder and their successors, upon the additional terms and under and upon and subject to the further several and respective rights, reservations, obligations, agreements, covenants and requirements herein set out or contained, that is to say:

(There are here omitted certain provisions relative to covenants, certification, registration and exchange of bonds, sub-companies, and management of collateral and pledged bonds.)

## ARTICLE SEVEN.

### REMEDIES UPON DEFAULT.

SECTION 1. In case the Company shall make any default (1) in the payment of any installment of interest upon any of the bonds issued hereunder and secured hereby, and any such default shall continue for the period of six months after the payment of such installment of interest shall have become due and been demanded, or (2) in the due performance or observance of any other covenant or condition herein contained and required to be performed or observed by the Company and any such last mentioned default shall continue for the period of sixty days after notice thereof shall have been given to the Company by the Trustees or by the holders of one-fifth in interest of the bonds issued and then outstanding hereunder, specifying wherein such default consists, then and in either and any and every such case the Trustees hereunder may in their discretion, and shall, upon the request of one-fifth in interest of the owners and holders of the bonds issued and then outstanding here-

under, by notice in writing delivered to the Company, declare the principal sums of all the bonds hereby secured to be immediately due and payable and the same shall thereupon become and be immediately due and payable; *Provided, however*, that in each and any and every such case the owners and holders of a majority in interest of the bonds issued and outstanding hereunder may at any time after any such default or any such declaration accelerating the maturity of the principal sums of all the bonds hereby secured, waive any such default upon such terms and conditions as such majority may deem for the best interest of the owners and holders of the bonds issued hereunder and hereby secured and revoke and annul any such declaration accelerating the maturity of the principal sums of the bonds hereby secured, and thereupon the principal sums of all the bonds then outstanding hereunder shall immediately cease to be due and payable; *Provided always*, and it is hereby declared that no such action of the bondholders in waiving any default or revoking or annulling any declaration accelerating the maturity of the bonds issued and outstanding hereunder shall be taken to extend or apply to or affect any subsequent default or to impair any rights resulting therefrom.

' SECTION 2. In case the Company shall make any default (1) in the payment of any installment of interest upon any of the bonds issued hereunder and secured hereby and any such default shall continue for the period of six months after the payment of such installment of interest shall have become due

and been demanded, or (2) in the due performance or observance of any other covenant or condition herein contained and required to be performed or observed by the Company, and any such last mentioned default shall continue for the period of sixty days after notice thereof shall have been given to the Company by the Trustees or by the holders of one-fifth in interest of the bonds issued and then outstanding hereunder, specifying wherein such default consists, or (3) in the payment of the principal sums of any of said bonds when the same shall become or be declared due and payable, then the Trustees hereunder may, in their discretion, and shall, upon the request of the holders and owners of one-fifth in interest of the bonds issued and then outstanding hereunder and upon indemnification against all costs, expenses and liabilities to be by the Trustees incurred in such behalf, enter into and upon all and singular the said property, rights and franchises then covered by this mortgage and each and every part thereof, and exclude wholly therefrom the Company and its agents, who shall forthwith surrender the same to the Trustees, to have, hold, manage, operate, control and use the same, either personally or by their superintendents, managers, receivers, agents, servants, or attorneys, and conduct the business thereof, and exercise the franchises pertaining thereto; to make, from time to time, at the expense of the trust estate, all repairs and replacements and such useful alterations, additions and improvements thereto as may seem to them necessary or judicious, and to collect



and receive all incomes, including dividends upon stocks and interest upon bonds or other securities then subject to the lien hereof, and rents, issues and profits of the same and of every part thereof, and to exercise in their discretion the voting power of the stocks then pledged hereunder, either personally or by their attorneys or proxies, said Trustees under the circumstances aforesaid being hereby constituted as the attorneys of the Company for that purpose; and after deducting the expenses of operating said property and conducting the business thereof, and of all repairs, replacements, alterations, additions and improvements as aforesaid, and all payments which shall be made for taxes or assessments, if any, prior to the lien of this mortgage upon the said property, or any part thereof, as well as a just and reasonable compensation for their own services, and for the services of all agents, clerks or other employes by them properly engaged or employed, to apply the money arising as aforesaid to the payment of the interest in arrears on the bonds secured hereby, in the order in which such interest shall have become due and payable, ratably to the persons entitled to such interest, and after paying all such interest which shall have become due and payable, to apply the said moneys to the satisfaction of the principal of the aforesaid bonds which may be at that time due and unpaid, if the principal shall have become due and payable as herein provided, ratably without discrimination or preference; *Provided*, that if after such entry, all the arrears of interest shall be fully



discharged, and if the Company shall have made good each and every other covenant, obligation or condition herein required to be kept, performed or observed by it, and in which it may have made default, or shall pay unto the Trust Company to be held upon the trusts hereof, an amount of money sufficient to pay all loss or damage resulting therefrom, or shall otherwise make good or repair all loss or damage so resulting, then each and every default shall be deemed to be waived and discharged; and the Trustees shall restore said property to the Company, to possess, manage, operate and enjoy the same, in like manner, as before such entry, but without prejudice to the right of the Trustees to enter, as herein provided, for any subsequent default.

SECTION 3. In case the Company shall make any default (1) in the payment of any installment of interest upon any of the bonds issued hereunder and hereby secured, and any such default shall continue for the period of six months after the payment of such installment of interest shall have become due and been demanded, or (2) in the due performance or observance of any other covenant or condition herein contained and required to be performed or observed by the Company and any such last mentioned default shall continue for the period of sixty days after notice thereof shall have been given to the Company by the Trustees or by the holders of one-fifth in interest of the bonds issued and then outstanding hereunder, specifying wherein such default consists, or (3) in the payment of the principal sums of any

of said prior bonds when the same shall become, or be declared due and payable, then and in either and in any and every such case it shall be lawful for the Trustees, and on requisition in writing signed by the holders of not less than one-fifth in interest of the owners of the bonds issued and outstanding hereunder, and upon adequate indemnity against all costs, expenses and liabilities to be by them incurred, it shall be the duty of the Trustees, to proceed to enforce the rights of the holders of the bonds issued and outstanding hereunder either by sale of the property hereby pledged, if the principal sums of the bonds hereby secured shall have become or shall have been declared due and payable as herein provided, or by any other appropriate proceeding in any proper Court by way of remedy as the Trustees, being advised by counsel learned in the law, shall deem most effectual to enforce such rights or as such requisition may specify, subject, nevertheless, to the power in all cases in this Section provided, hereby declared, of a majority in interest of the holders and owners of the bonds issued and then outstanding hereunder in writing to waive any such default upon such terms and conditions as such majority may deem for the best interests of the owners and holders of the bonds issued hereunder and then secured hereby; *Provided, always,* and it is hereby declared that no such action of the bondholders in waiving any default shall be taken to extend, or apply to or effect any subsequent default or to impair any rights of the Trustees or of the bondholders resulting therefrom. The right to

institute judicial proceedings for the enforcement of any rights hereby created is vested exclusively in the Trustees, provided the Trustees shall institute such proceedings within a reasonable time after the making of such requisition and offer of such indemnity as hereinbefore provided.

SECTION 7. The Company will not, at any time, insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor will it claim, take or insist upon any benefit or advantage from any law now or hereafter in force providing for valuation or appraisal of the mortgaged property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any Court of competent jurisdiction; nor after any such sale or sales will it claim or exercise any right under any statute enacted by any state or otherwise to redeem the property so sold or any part thereof; and it hereby expressly waives all benefit and advantage of every such law or laws; and it covenants that it will not hinder or impede the execution of any power herein granted and delegated to the Trustees but that it will suffer and permit the execution of every such power, as though no such law or laws had been made or enacted.

SECTION 8. The Trustees may and shall, upon request of one-tenth in interest of the owners and holders of the bonds then outstanding hereunder, and indemnification to them, as herein provided, commence

and prosecute all such other and further proceedings in law or equity as they may be advised is necessary or proper to protect the mortgage security and the rights of the holders of the bonds issued hereunder, but all such proceedings so commenced by the Trustees shall be subject to the control of a majority in interest of the owners and holders of the bonds issued and outstanding hereunder.

SECTION 9. No delay or omission of the Trustees or of any holder or any of the bonds secured hereby to exercise any rights or power accruing from any default then continuing hereunder shall impair any such right or power or shall be construed as a waiver of any such default or acquiescence therein except as herein expressly provided to the contrary.

No person purchasing bonds or dealing with the Trustees shall be bound to inquire or ascertain whether any default has been made or any required request or notice has been made or given, or whether any event has happened upon which any of the powers herein contained may be exercised by the Trustees, or otherwise as to the propriety or regularity of any sale or any exercise of any of said powers.

SECTION 10. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustees, or to the holders of the bonds hereby secured, is intended to be or shall be exclusive of any other remedy or remedies; but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by stat-



ute; but no action at law shall be instituted against the Company by the Trustees or either of them or any bondholder to enforce the contractual liability of the Company to pay the principal sum of any bonds until the property hereby conveyed shall have been exhausted by pursuit of the remedies herein provided.

SECTION 11. If the Company shall at any time before the sale of the property, rights, privileges and franchises hereby conveyed and before the first day of May, 1950, pay off and discharge all the semi-annual installments of interest theretofore accrued and then due and payable on all of the bonds issued and outstanding hereunder, or shall duly deposit with the Trust Company a sufficient amount for the purpose, and shall also duly pay unto the Trustees all such amounts, if any, as shall have been advanced or paid by the Trustees, or either of them, pursuant to any powers herein contained and for which they, he or it shall not have been reimbursed, and if the Company shall keep, perform and discharge each and every other covenant, obligation or condition herein assumed by or imposed upon it and in the keeping or performance or observance of which it shall at any time have made default, or shall cause the same to be done, or shall make payment of all damages, accrued, or to accrue, on account of each and every such default, or shall otherwise make good or repair all loss or damages resulting therefrom, including all Trustees' and other charges, and all taxes, assessments



and levies, then and in that event, each and every default theretofore made hereunder by the Company shall be deemed to be discharged, and each and every declaration, if any, theretofore made accelerating the maturity of the bonds hereby secured shall thereupon be deemed to be rescinded, revoked and annulled, and each and every right, power, privilege and authority herein reserved to the Company shall thereupon revive and be in full force and effect the same as if no default had occurred, and the Trustees shall not proceed with such sale, but the discharge of such default shall not prejudice any right of the Trustees or of the bondholders accruing from any subsequent default.

(There are here omitted certain provisions as to waiver of individual liability, redemption of bonds, sub-companies, release of property, and provisions as to bonds and Trustees.)

SECTION 3. The Company and the Trustees shall, upon reasonable request, execute such further instruments and do such further acts as may be necessary or proper to carry out more effectually the purposes of this mortgage, and in case of any sale by the Trustee of the property, assets or estates subject hereto in execution of the provisions hereof, the Company agrees to execute such further instruments as it may be advised are reasonably necessary or proper to perfect and assure the title to the property so purchased to the purchaser or purchasers thereof.

SECTION 4. The Trustees hereby accept the trusts created by this indenture, provided, however, that

nothing herein recited shall be construed to prevent them or either of them from resigning and being discharged from the trusts aforesaid.

*In witness whereof*, the said *Great Shoshone and Twin Falls Water Power Company* has hereunto, pursuant to the authority aforesaid, caused its name to be signed by its President or Vice-President, and its corporate seal hereunto to be affixed, attested by the signature of its Secretary or Assistant Secretary, and the said *The Trust Company of America* has hereunto caused its name to be signed by its President or Vice-President and its corporate seal to be hereunto affixed, attested by the signature of its Secretary or Assistant Secretary, and the said *James D. O'Neil* has hereunto set his hand and seal, all as of the day and date herein first above written.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY.

(Signed) By R. L. KESTER, Vice-President.

Done in duplicate.

Attest: [Seal]

(Signed) W. B. McCAIN, Secretary.

THE TRUST COMPANY OF AMERICA.

(Signed) By WM. H. LEUPP,

Attest: [Seal] Vce-President.

(Signed) LAWRENCE SLADE, Secretary.

JAMES D. O'NEIL [Seal]

State of New York,  
County of New York,—ss.

On this 23rd day of July, in the year 1910, before me, J. A. Allis, a Notary Public in and for the Coun-

ty of New York, in the State of New York, personally appeared R. L. Kester, known to me to be the Vice-President of the Great Shoshone and Twin Falls Water Power Company, the corporation that executed the within and foregoing instrument, and acknowledged to me that such corporation executed the same.

*In witness whereof*, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.

J. A. ALLIS,  
Notary Public.

[Seal]

New York County, N. Y.

My commission expires March 31st, 1911.

State of New York,  
County of New York,  
City of New York,—ss.

On this 23rd day of July, in the year 1910, before me, J. A. Allis, a Notary Public in and for the County of New York, in the State of New York, personally appeared Wm. H. Leupp, known to me to be the Vice-President of The Trust Company of America, one of the corporations that executed the within and foregoing instrument, and acknowledged to me that such corporation executed the same, in evidence of its acceptance of the trusts thereby created.

*In witness whereof*, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.

(Signed) J. A. ALLIS,  
Notary Public.

[Seal]

New York County, N. Y.

My commission expires March 31st, 1911.

State of New York,  
County of New York,—ss.

On this 23rd day of July, in the year of our Lord 1910, before me, J. A. Allis, a Notary Public in and for the County of New York in the State of New York, personally appeared James D. O'Neil, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same, in evidence of his acceptance of the trusts hereby created.

*In witness whereof*, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

J. A. ALLIS,  
Notary Public.

[Seal]

New York County, N. Y.

My commission expires March 31st, 1911.

*EXHIBIT B.*

(This is an indenture dated June 21, 1911, made by the Great Shoshone and Twin Falls Water Power Company to The Trust Company of America and James D. O'Neil, Trustees, conveying certain specific real property, described in complainant's Amendments to its Bill of Complaint on file herein, pursuant to the provisions of and upon the trusts and under the provisions set forth in the Mortgage or Deed of Trust made by the Great Shoshone and Twin Falls Water Power Company to The Trust Company of America and James D. O'Neil, Trustees, dated May 1, 1910, identical with the copy thereof attached to the Bill of Complaint of the complainant herein and

marked Exhibit "A". Signed by R. L. Kester, Vice-President, and W. B. McCain, Secretary of Great Shoshone and Twin Falls Water Power Company, and sealed with the seal of said company, and duly acknowledged.)

*EXHIBIT C.*

(This is a Supplemental Mortgage dated April 7th, 1913, made by the Great Shoshone and Twin Falls Water Power Company to The Equitable Trust Company of New York and James D. O'Neil, as Trustees, conveying certain specific property, described in the complainant's Amendments to its Bill of Complaint on file herein, pursuant to the provisions of and upon the trusts and under the provisions set forth in the Mortgage or Deed of Trust dated May 1st, 1910, from the Great Shoshone and Twin Falls Water Power Company to The Trust Company of America and James D. O'Neil, as Trustees, identical with the copy thereof attached to the Bill of Complaint herein and marked "Exhibit A". Signed R. L. Kester, Vice-President, W. B. McCain, Secretary, Great Shoshone and Twin Falls Water Power Company, and sealed with the seal of said Company, and duly acknowledged.)



(Title of Court and Cause.)

## SUPPLEMENTAL BILL OF COMPLAINT.

Equity—No. 526.

*To the Honorable the Judges of the District Court  
of the United States for the District of Idaho,  
Southern Division:*

And now comes The Equitable Trust Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York, and a citizen of said State, as Trustee under a certain deed of trust made by Great Shoshone and Twin Falls Water Power Company, and supplemental mortgages or deeds of trust, and pursuant to leave of court first had and obtained, brings this, its supplemental bill of complaint against Great Shoshone and Twin Falls Water Power Company, a corporation organized and existing under the laws of the State of Delaware, and a citizen of said State; William T. Wallace, as receiver of said Company and a citizen of the State of Idaho, and a resident of the Southern Division of the District of Idaho; Guy I. Towle, a citizen of the State of Idaho and a resident of the Southern Division of the District of Idaho; and Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, a citizen of the State of Idaho, and a resident of the Southern Division of the District of Idaho; and thereupon your Orator respectfully shows to the court as follows:

*First.* Your Orator filed its bill in this court and cause against the above named defendants and each

of them, on to-wit, April 14th, 1915, for the foreclosure of a certain mortgage or deed of trust and supplemental mortgages executed and delivered by said Great Shoshone and Twin Falls Water Power Company to The Trust Company of America and James D. O'Neil, as trustees, the predecessors in estate and title as such trustees of your Orator, The Equitable Trust Company of New York, to secure an issue of bonds by said Great Shoshone and Twin Falls Water Power Company to divers persons, partnerships and corporations, all of which more fully appears in said bill of complaint, to which this bill is filed as a supplement.

*Second.* In and by said bill of complaint referred to in the preceding paragraph, it is alleged, among other things,

“that on the second day of November, 1914 (the first day of said month being Sunday and a legal holiday), there fell due and became payable an instalment of interest upon the bonds issued under and secured by said Deed of Trust and said Supplemental Mortgages and now outstanding as aforesaid, which instalment amounted to the sum of fifty-five thousand seven hundred and fifty dollars (\$55,750). On said 2nd day of November, 1914, certain of the coupons appertaining to said bonds and maturing said day, evidencing the instalment of interest due and payable on said day, were duly presented for payment at the banking house of your Orator in the City of New York, as successor by merger to The Trust

Company of America, where, by their terms, said coupons were payable, and payment was then and there duly demanded, and the surrender of said coupons duly tendered; but payment thereon was wholly refused and said Great Shoshone and Twin Falls Water Power Company wholly defaulted in the payment of said coupons and in the payment of the semi-annual instalment of interest due November 2, 1914, on all of the bonds secured by said Deed of Trust and Supplemental Mortgages and now outstanding, and has ever since wholly failed, omitted and refused to pay or cause to be paid said semi-annual instalment of interest or any part thereof and has wholly failed, omitted and refused to pay or cause to be paid the coupons maturing November 2, 1914, and duly presented for payment as aforesaid, or any of them or any part thereof; and said Great Shoshone and Twin Falls Water Power Company has therein and thereby wholly made default in the covenants and conditions of said Mortgage."

*Third.* By said deed of trust so executed and delivered by Great Shoshone and Twin Falls Water Power Company to The Trust Company of America and James D. O'Neil, as trustees, a copy of which is annexed to said bill of complaint, which is filed in this cause and to which reference is hereby made with the same force and effect as if herein set out in full, it is, among other things, by Section 1 of Article Seven thereof, provided:

“In case the Company shall make any default (1) in the payment of any instalment of interest upon any of the bonds issued hereunder and secured hereby, and any such default shall continue for the period of six months after the payment of such instalment of interest shall have become due and been demanded \* \* \* then and in either and any and every such case, the Trustees hereunder may in their discretion, and shall, upon the request of one-fifth in interest of the owners and holders of the bonds issued and then outstanding hereunder, by notice in writing delivered to the Company, declare the principal sums of all the bonds hereby secured to be immediately due and payable and the same shall thereupon become and be immediately due and payable.”

By said deed of trust (Article Seven, Section 3), it is further provided:

“In case the Company shall make any default (1) in the payment of any instalment of interest upon any of the bonds issued hereunder and hereby secured, and any such default shall continue for the period of six months after the payment of such instalment of interest shall have become due and been demanded, \* \* \* then and in either and in any and every such case it shall be lawful for the Trustees, and on requisition in writing signed by the holders of not less than one-fifth in interest of the owners of the bonds issued and outstanding hereunder, and upon adequate indemnity against all costs, expenses and liabilities

to be by them incurred, it shall be the duty of the Trustees, to proceed to enforce the rights of the holders of the bonds issued and outstanding hereunder either by sale of the property hereby pledged, if the principal sums of the bonds hereby secured shall have been declared due and payable as herein provided, or by any other appropriate proceeding in any proper Court by way of remedy as the Trustees, being advised by counsel learned in the law, shall deem most effectual to enforce such rights or as such requisition may specify."

*Fourth.* The aforesaid default in the payment of interest accruing on the 2nd day of November, 1914, as alleged in the bill of complaint herein, and as quoted in this supplemental bill, has continued for more than six months since the 2nd day of November, 1914, when said instalment of interest became due and was demanded, as alleged in said bill, and as repeated by quotation herein, and said default still continues and has not been repaired or remedied or waived. On account of said default and of the continuance thereof for more than six months as aforesaid, your Orator, The Equitable Trust Company of New York, as sole successor trustee, under the said deed of trust and supplemental mortgages in the said original bill and herein alleged and referred to, has, by notice in writing, delivered to said Great Shoshone and Twin Falls Water Power Company and to William T. Wallace, as Receiver of said Company, declared the principal sum of all the bonds secured by said deed of trust and supplemental mortgages to be



immediately due and payable, and the same, amounting in the aggregate to \$2,230,000.00 thereupon became immediately, and is now, due and payable. Said declaration of principal due and notice thereof was executed by your Orator on the 21st day of August, 1915, and was on the 23rd day of August, 1915, duly delivered to the Great Shoshone and Twin Falls Water Power Company and was on the 30th day of August, 1915, duly delivered to William T. Wallace, as Receiver of property of said company. A copy of said declaration of principal due and notice thereof is attached hereto marked "Exhibit "A", and by reference made part hereof, and your Orator prays leave to refer to the same as fully and to the same extent as if at length incorporated herein. Since the filing of the original bill in this cause, and on, to-wit, the first day of May, 1915, there fell due and became payable an instalment of interest upon the bonds issued and secured by said deed of trust and said supplemental mortgages and outstanding as alleged in the said original bill, which instalment of interest amounted to the sum of Ffty-five Thousand Seven Hundred and Fifty Dollars (\$55,750). No part of said instalment of interest was paid upon said date, nor has the same been paid since, nor are any funds on hand with your Orator, or with any other person or corporation, nor has the defendant company or said defendant William T. Wallace, as such Receiver, any funds with which to pay said interest or any part thereof, but the same is wholly due and in default and unpaid.

*Fifth.* When this action was begun, the default in the payment of the interest which accrued on the 2nd day of November, 1914, had not continued for six months and default had not been made in the payment of interest subsequently accruing on said bonds, nor had the principal of the bonds been declared or become due. The right of the complainant to declare the principal of said bonds to be due and payable has accrued and the same has been declared due and payable and has become due and payable since the commencement of this action; and this supplemental bill is filed to enforce the rights of complainant and of the holders of the bonds issued and outstanding under said deed of trust and supplemental mortgages, by foreclosure of the said deed of trust and supplemental mortgages for the principal and accrued interest in default thereon.

*Sixth.* The rents, issues and profits of the property conveyed by said deed of trust and said supplemental mortgages are mortgaged for the payment of said bonds and the mortgaged property is insufficient to pay said mortgage debt.

*Seventh.* Each of the parties defendant claims to have some right or interest in the property covered by said deed of trust and said supplemental mortgages, all of which rights and interest, as complainant is informed and believes and therefore alleges, are subject to the rights of complainant and the holders of said bonds therein.

*Eighth.* Your Orator has asked and obtained leave

of court to file this supplemental bill and the same is filed pursuant to leave so granted and obtained.

*In consideration whereof*, and for as much as your Orator is remediless in the premises according to the rules of the common law and can have adequate relief only in a court of equity, your Orator repeats the prayers for relief in said original bill of complaint contained as if herein set out in full as applied to this supplemental bill and further prays this honorable Court:

1. That the said defendants herein named may be required by order of this Court, to separately and severally make answer unto all and singular the matters herein stated and charged, but not under oath, their answers under oath being hereby expressly waived.

2. That the Court find and adjudge that the principal of the said bonds issued and outstanding, as alleged in the bill of complaint herein, in the amount of Two Million, Two Hundred and Thirty Thousand Dollars (\$2,230,000) is due and payable, and that the said deed of trust bearing date of May 1st, 1910, and the supplemental mortgages hereinbefore and in the original bill referred to, may be foreclosed for said principal amount with interest thereon and for the amount of said unpaid instalments of interest and interest thereon.

3. That an account be had and taken of the bonds, interest coupons and interest secured by said deed of trust and supplemental mortgages, and the amount

due thereon, with the names of the lawful holders or owners thereof, be ascertained; that an account be taken of all property of every kind conveyed or pledged by said deed of trust and supplemental mortgages or intended so to be, whether acquired before or after the execution and delivery thereof; that said defendant company, and said Wallace as Receiver of its property be ordered to fully disclose what property and interest not specifically described in said original bill of complaint or in said deed of trust or said supplemental mortgages, are conveyed or transferred or intended to be conveyed or transferred by said deed of trust or said supplemental mortgages to your Orator, and compelled to convey or transfer the same to your Orator by way of further assurance; and that an account may be taken of all liens and incumbrances, if any, upon any of said mortgaged property or interest, and the priorities thereof determined.

4. That it be adjudged and decreed that a right of entry into and upon all the properties, franchises, premises, and rents, issues and profits thereof, conveyed or intended to be conveyed by said deed of trust and said supplemental mortgages, and each and every part thereof, has accrued to complainant and that complainant is entitled to have the rents, issues and profits thereof applied in accordance with the provisions of said deed of trust and said supplemental mortgages, and that said rents, issues and profits be so applied.

5. That the defendant, Great Shoshone and Twin Falls Water Power Company and William T. Wallace, as Receiver of its property, may be decreed to pay within a short time to be fixed by the Court, to the holders of the bonds and coupons secured by said deed of trust and supplemental mortgages, or to your Orator as trustee for said holders, the principal amount of said bonds and the defaulted interest thereon and all other sums due or to become due and payable under and by virtue of said deed of trust or of such bonds and coupons, together with a sum sufficient to pay the costs, expenses and allowances of this suit, and that in default thereof, all the properties, rights, privileges, interests and franchises of the defendant, Great Shoshone and Twin Falls Water Power Company be sold by the master of this Court, appointed for the purpose, as a single parcel without redemption, to satisfy the said claim or lien of the plaintiff and of the said holders of the bonds secured by the said deed of trust and supplemental mortgages.

6. That the rights, claims and liens of all the defendant parties to this suit be decreed to be inferior and subordinate to the lien or claim of your Orator as trustee under said deed of trust and supplemental mortgages, and that the right, title, claim and equity of redemption of all the defendants be perpetually barred and foreclosed.

7. That upon the coming in of the proceeds of sale, the Court make distribution thereof according to the law and the practice of the Court, the property



to be delivered to the purchaser free from all liens and claims of any of the parties to this cause.

8. That your Orator may have its proper costs, expenses and allowances and all other relief which it may in equity and in good conscience be entitled to, including all the relief prayed for in the original bill of complaint on file herein.

And your Orator will ever pray, etc.

THE EQUITABLE TRUST COMPANY OF NEW YORK.

By F. W. FULLE, Vice-President.  
MURRAY, PRENTICE & HOWLAND,  
SULLIVAN & SULLIVAN,  
RICHARDS & HAGA,  
Solicitors for Complainant.

CHARLES P. HOWLAND,  
OLIVER O. HAGA,  
Of Counsel.

United States of America,  
Southern District of New York,  
County of New York,—ss.

F. W. FULLE, being duly sworn, deposes and says that he is Vice-President of The Equitable Trust Company of New York, complainant which brings the foregoing supplemental bill of complaint; that he has read the said supplemental bill of complaint and knows the contents thereof; that the matters therein stated are true to his own knowledge, except as to the matters therein alleged on information and belief and as to those matters he believes it to be true.

F. W. FULLE.

Subscribed and sworn to before me this 9th day of September, 1915.

MYLES M. BOURKE,

Notary Public No. 222 New York County.

[Seal] Certificate No. 6148 filed in Register's Office.

*EXHIBIT A.*

*To Great Shoshone and Twin Falls Water Power Company and William T. Wallace, as Receiver of Great Shoshone and Twin Falls Water Power Company:*

The Equitable Trust Company of New York, as the sole successor Trustee under a Deed of Trust made by Great Shoshone and Twin Falls Water Power Company to The Trust Company of America and James D. O'Neil, as Trustees, dated May 1, 1910, and the mortgages supplementary thereto, dated June 21, 1911, and April 7, 1913, *hereby notifies you and each of you that:*

*Whereas*, default has been made in the terms, covenants and conditions of said Deed of Trust and Supplemental Mortgages in that upon the 2nd day of November, 1914 (the first day of said month being Sunday and a legal holiday) there fell due and became payable an installment of interest upon the bonds issued under and secured by said Deed of Trust and said Supplemental Mortgages and now outstanding thereunder, which installment amounted to the sum of fifty-five thousand seven hundred and fifty dollars (\$55,750); and on said 2nd day of November, 1914, certain of the coupons appertaining to said

bonds and maturing on said day, evidencing the installment of interest on said bonds due and payable on the said day, were duly presented for payment at the Banking House of The Equitable Trust Company of New York (the successor by merger to The Trust Company of America), in the City of New York, and payment was then and there duly demanded and the surrender of said coupons duly tendered; but payment thereon was wholly refused and said Great Shoshone and Twin Falls Water Power Company wholly defaulted in the payment of said coupons and in the payment of the semi-annual installment of interest due November 2, 1914, evidenced thereby, and ever since has wholly failed, omitted and refused to pay or cause to be paid said semi-annual installment of interest or any part thereof and has wholly failed to pay or cause to be paid the coupons maturing November 2nd, 1914, and duly presented for payment, as aforesaid, or any of them; and,

*Whereas*, such default has continued for the period of six (6) months after the payment of such installment of interest became due and was duly demanded;

*Now, Therefore*, in accordance with the provisions of Section 1 of Article VII of said Deed of Trust dated May 1, 1910, between Great Shoshone and Twin Falls Water Power Company and The Trust Company of America and J. D. O'Neil, as Trustees, The Equitable Trust Company of New York as sole successor Trustee, aforesaid, has declared and does hereby declare the principal sums of all the bonds secured by said Deed of Trust and Supplemental

Mortgages now outstanding to be immediately due and payable and the same shall hereby become and be immediately due and payable,

*In Witness Whereof*, The Equitable Trust Company of New York, has caused its corporate seal to be hereto affixed, attested by its Secretary or Assistant Secretary and these presents to be signed in its name by its President or Vice-President this 21st day of August, 1915.

THE EQUITABLE TRUST COMPANY OF NEW

YORK. By LYMAN RHOADES, Vice-President.

(Corporate Seal.)

Attest:

J. N. BABCOCK,

Assistant Secretary.

(Duly verified.)

Endorsed: Filed Sept. 16, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

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(Title of Court and Cause.)

AMENDMENTS TO BILL OF COMPLAINT.

In Equity—No. 526.

*To the Honorable the Judges of the District Court of the United States, for the District of Idaho, Southern Division:*

Comes now the plaintiff, The Equitable Trust Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York, as Trustee under a certain Deed of Trust made by defendant Great Shoshone and Twin

Falls Water Power Company, dated May 1, 1910, and Supplemental Mortgages dated June 21, 1911, and April 7, 1913, and leave of court having been first had and obtained, makes and files the following amendments to the plaintiff's Bill of Complaint filed herein on April 14, 1915, to-wit:

Amend section Sixteenth of the Bill of Complaint, by striking out the whole thereof and inserting in lieu of said section Sixteenth, the following:

Sixteenth: Your orator is informed and believes, and therefore avers that at the time of the execution and delivery of said Deed of Trust, Exhibit "A", said Great Shoshone and Twin Falls Water Power Company was the owner of property of various kinds, which was referred to and generally described in and subjected to the lien of said Deed of Trust which was not specifically described therein; and also that since the date of the execution and delivery of said Deed of Trust dated May 1, 1910, certain other property, real, personal and mixed, and rights and interests (other than as specified and enumerated in said Supplemental Mortgages dated June 21, 1911, and April 7, 1913) have become subject to the lien of said Deed of Trust by reason of the acquisition thereof by said Great Shoshone and Twin Falls Water Power Company and under and pursuant to and by reason of the terms of said Deed of Trust.

Your orator is informed and believes and therefore avers, that the property owned by said Great Shoshone and Twin Falls Water Power Company at the



time of the execution of said Deed of Trust, and at the times of the execution of said Supplemental Mortgages, or acquired subsequent to the execution of said Deed of Trust or Supplemental Mortgages, and now owned by said Great Shoshone and Twin Falls Water Power Company, as the same now stands and exists, and which said property is subject to the lien of the said Deed of Trust and Supplemental Mortgages, is specifically described as follows, to-wit:

(There is omitted here a specific description of power sites, stations, sub-stations, other real estate, buildings, transmission lines, franchises, water permits and rights, all of which is also included in the general description that follows).

And generally all ~~other~~ rights and property of the Power Company now owned or in process of acquisition, and whether real, personal or mixed, including all power and other plants, water permits and rights, appropriations of water, dams, reservoirs, flumes, canals, tunnels, race ways, controlling works, water frontage, power sites, ferries, machinery, transmission and distributing lines, poles, wires, cables, telephone and telegraph lines, terminal properties, stations, sub-stations, docks, yards, machine shops, weirs, water wheels, office buildings, structures, tenements and hereditaments and appurtenances, bridges, boats, rolling stock, rights of way, dynamos, convertors, transformers, generators, switch boards, arresters, circuit breakers, meters, equipment, machinery, tools, implements, apparatus and appliances, stores, dwelling houses, sub-ways, conduits,

fixtures, supplies, furniture, chattels, stocks, bonds, certificates of interest, and other securities, choses in action, privileges, franchises, immunities, easements, accounts receivable, claims or demands due and owing to the Power Company, appurtenances, possessions, rights, tolls, rents, revenues, issues and profits, and also any and all estate, right, title and interest, property, possession, claim and demand whatsoever, as well in law as in equity, and whether specifically enumerated herein or not, of the Power Company, in and to all property whatsoever, real, personal and mixed, of every kind and description, and wheresoever situate, which the Power Company may have at any time or from any source acquired.

THE EQUITABLE TRUST COMPANY OF NEW YORK.

By MURRAY, PRENTICE & HOWLAND,  
Residence: New York City, N. Y. ;  
SULLIVAN & SULLIVAN,  
RICHARDS & HAGA,  
Residence: Boise, Idaho ;  
Solicitors for Complainant.

CHARLES P. HOWLAND,  
OLIVER O. HAGA,  
Of Counsel.

(Duly verified.)

Endorsed: Filed October 26, 1915.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

APPEARANCE OF WILLIAM T. WALLACE AS  
RECEIVER OF GREAT SHOSHONE AND  
TWIN FALLS WATER POWER COMPANY.

*To A. L. Richardson, Clerk of said Court:*

I hereby enter the appearance of William T. Wallace as Receiver of Great Shoshone and Twin Falls Water Power Company, a defendant in the above entitled cause, and myself as his solicitor.

Dated May 3rd, 1915.

S. H. HAYS,

Solicitor for Defendant, William T. Wallace as  
Receiver of Great Shoshone and Twin Falls  
Water Power Company.

Endorsed: Filed May 4, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

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(Title of Court and Cause.)

ANSWER.

Comes now the defendant herein, William T. Wallace, Receiver of the Great Shoshone and Twin Falls Water Power Company, for answer to the bill of complaint and to the supplemental bill of complaint filed in the above entitled cause and says:

1.

Admits the allegations contained in paragraphs 1, 2, 3, 5, 7 and 9 of the bill of complaint filed herein.

2.

Answering the tenth paragraph of the bill of complaint, defendant says that as shown by the books of

the company bonds to the aggregate amount of \$2,230,000.00 were issued and authenticated by the certificate of the Trust Company of America as Trustee and that all of said bonds were duly certified; that the defendant has no information or belief sufficient to enable him to answer whether or not the said bonds were duly issued by the Great Shoshone and Twin Falls Water Power Company for a valuable consideration or in accordance with law or with the provisions of the said deed of trust, or whether all of the said bonds or any portion thereof so issued are now outstanding in the hands of divers persons or corporations who are the owners or holders thereof for value, or whether said bonds are valid or outstanding obligations of the Great Shoshone and Twin Falls Water Power Company, or are entitled to the benefits of the deed of trust mentioned in paragraph ten of the bill of complaint, and therefore denies the same.

## 3.

Defendant admits the allegations contained in the 12th and 13th paragraphs of the bill of complaint.

## 4.

Answering paragraph sixteen of the bill of complaint herein, defendant says that various parcels of real estate have been acquired by the defendant company at various times, none of which are mentioned in the bill of complaint herein; that various of said parcels were acquired between the time of the execution of the trust deed, Exhibit "A", and the supplemental mortgages, Exhibits "B" and "C", and that said parcels of real estate are not described in

said supplemental mortgages; that questions of law arise with regard to various of the parcels of property as to whether they are included within the terms of the said trust deed or mortgages set forth in the bill of complaint; that there is also certain property described in the various mortgages which is not now the property of the Great Shoshone and Twin Falls Water Power Company and never came into the charge of the receiver.

That prior to the receivership, the defendant company had entered into a contract with the owners of the light and water plant in the Town of Shoshone whereby they were to take over said light and water plant and were to pay therefor from the proceeds of the property, taking payment therefor at the rate of sixty per cent of all of the proceeds of the property until the total amount was paid; that during the receivership, under this arrangement, the full amount of the purchase price being sixty per cent of the amount of all proceeds, was fully paid.

That the said Electric Light and Water Works in the Village of Shoshone were mentioned and described in the mortgage, Exhibit "A", but at the time of the execution of the mortgage, the title thereto had not been procured, being only under contract; that arrangements are under way for the sale of the water works plant, being a part of the said property, to the Village of Shoshone although title to said property has not yet been taken by the company or the receiver.



That there is in the possession of the receiver herein a considerable amount of notes secured by mortgages for power accounts long past due; that there is also a considerable amount of accounts receivable long past due which are in the hands of the receiver.

That in the month of August, 1914, the defendant company had on deposit in the Milner State Bank the sum of \$17,695.79; that said bank closed its business and transferred its assets; that in the course of such liquidation, there remains due out of the assets of the said bank to the receivership estate a sum in excess of \$12,000.00, the remainder having been heretofore paid.

That all of the capital stock of the Jerome Water Works Company, a corporation operating a water works plant in the village of Jerome, was owned by the defendant company and is in the custody and charge of the receiver herein.

That there was also a ferry at Shoshone Falls owned at the time of the appointment of the receiver by the defendant company and which is in charge of the receiver herein.

That the defendant company owns two automobiles, three motorcycles and two teams used in the operation of the company, all of which is in the charge of the receiver.

That at the time of the appointment of the receiver there was on hand a large and miscellaneous assortment of construction material such as poles, wire, cross-arms and insulators, transformers and other

material of like kind intended for construction purposes; that a portion of said material had been intended to be used for the construction of a line from Mountain Home to Boise, which line had been abandoned and the material therefor was on hand; that a portion of said material not needed by the defendant company or the receiver has been sold by said receiver to the Southern Idaho Water Power Company, and an accounting therefor has been made.

That in addition to this, at the various offices of the company in Twin Falls, Oakley, Shoshone, Jerome, Glens Ferry, Gooding and Mountain Home, a stock of lamps, fans, small motors, heating devices and other merchandise was kept on hand for the convenience of the customers of the company and to supply them with appliances which they needed, these appliances being in the nature of appliances ordinarily carried in electric stores.

5.

Defendant herein further answering says that bonds of the company were issued as set forth in the bill of complaint herein in the total amount of \$2,230,000.00; that of said amount, \$2,225,000.00 were deposited as collateral with the Commonwealth Trust Company of Pittsburgh under a trust agreement to secure an issue of notes of \$1,780,000.00

6.

That defendant has no information or belief sufficient to enable him to answer whether said notes were regularly, lawfully or properly issued, and therefore denies the same; that defendant has no in-

formation or belief sufficient to enable him to answer as to whether the holders of said notes acquired the same in due course of business or were owners or holders for value; that in the month of April, 1915, and after the appointment of the receiver herein, the owners or pretended owners or holders of the said notes, or a portion of them, caused the bonds to the amount of \$2,225,000.00 of the Great Shoshone and Twin Falls Water Power Company to be sold under the terms of the trust agreement with the Commonwealth Trust Company above mentioned for the purpose of paying the amounts claimed to be due upon the said issue of notes; that said sale was without notice to the receiver herein and without his knowledge or consent.

That defendant has no knowledge, information or belief sufficient to enable him to answer as to whether or not said bonds were lawfully or properly sold or whether the purchasers thereof obtained any title thereto, and defendant therefore denies the same.

That as defendant is informed and believes, the said bonds were purchased at about the rate of twenty cents upon the dollar, said purchase being made by a committee of the note holders or the majority thereof, and that said committee claims the ownership of said bonds although they are held by the Guaranty Trust Company, a corporation, as trustee, which company has presented its account to the receiver herein for allowance and approval; that this action was instituted in this court at the instance of the said committee.

Wherefore, defendant prays that the court first ascertain the amount actually due upon the obligations of the Great Shoshone and Twin Falls Water Company, defendant herein, and that only so much of the property of said company be sold as is covered by the liens described in the bill of complaint herein, and that the defendant be given all proper relief.

S. H. HAYS,  
Attorney for Defendant.  
Residing at Boise, Idaho.

(Duly verified.)

Endorsed: Filed Oct. 26, 1915.

W. D. McReynolds, Clerk.

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(Title of Court and Cause.)

APPEARANCE OF GREAT SHOSHONE AND  
TWIN FALLS WATER POWER COMPANY, A  
CORPORATION.

*To A. L. Richardson, Clerk of said Court:*

I hereby enter the appearance of Great Shoshone and Twin Falls Water Power Company, a corporation, a defendant in the above entitled cause, and myself as its solicitor.

Dated May 3rd, 1915.

P. B. CARTER,  
Solicitor for Defendant, Great Shoshone and Twin  
Falls Water Power Company, a corporation.  
Endorsed: Filed May 4, 1915.

A. L. Richardson, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

ANSWER.

Comes now the defendant, the Great Shoshone and Twin Falls Water Power Company, one of the defendants in the above entitled action, and answering the Bill of Complaint and the Supplemental Bill of Complaint admits each and every allegation of said Bill of Complaint and the Supplemental Bill of Complaint as therein set forth and specified.

P. B. CARTER,

Attorney for Great Shoshone and Twin Falls Water Power Company, Defendant.

Lodged Oct. 27, 1915.

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(Title of Court and Cause.)

In Equity—No. 526.

ANSWER OF CARL J. HAHN, ADMINISTRATOR OF THE ESTATE OF HARRY M. KING, DECEASED.

*Comes now* Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, one of the defendants, and for answer to the plaintiff's complaint herein admits, denies and alleges as follows:

I.

This defendant, answering Paragraph XX of plaintiff's complaint, admits that he is the administrator of the estate of Harry M. King, deceased, and claims an interest in the property herein referred to and lien thereon by virtue of the judgment recovered in the United States District Court of the District of Idaho, but denies that his interest, however, is sub-



ject to the interest of the plaintiff herein, as trustee under said deed of trust and supplemental mortgages.

## II.

This defendant further answering said complaint shows to the Court that prior to and on the 6th day of May, 1913, the Great Shoshone and Twin Falls Water Power Company, a corporation, and one of the defendants herein, was carrying on and discharging its duties as a public service corporation, engaged in generating, transmitting and distributing electric current in Ada, Elmore, Gooding, Owyhee, Lincoln and Twin Falls Counties, Idaho, and owned, controlled and operated an expensive distribution system of electrical, light, heat and power for domestic, commercial, irrigation and municipal purposes throughout the aforesaid counties in the State of Idaho, and is and was the owner of and in possession of a franchise to conduct a general electrical business and for the purpose of supplying heat, power and light and for other purposes in the city and county of Twin Falls, and in other cities and counties in the State of Idaho, for the purpose of conducting a general electric business, electric power and electrical energy, and the poles, wires, apparatus, machinery and other property useful in connection therewith, and that all the property owned by said corporation, including power plants and franchises, wires, poles and electrical apparatus used by said corporation is necessary for the use of said corporation in the operation of said electrical plant under said franchise.

## III.

This answering defendant further shows to the Court that on the 6th day of May, 1913, and at all times hereinafter mentioned, the defendant corporation was transacting business in the County of Twin Falls under and by virtue of a charter from the State of Idaho, and the authorization to do business in the State of Idaho, and by virtue of a license and franchise in the County of Twin Falls maintained and operated electric plant, heat and power wire system in the County of Twin Falls, and maintained and operated a light and high tension power wires along what is known as the Buhl and Twin Falls public road and about one mile east of the City of Buhl, Idaho, in the County of Twin Falls, and State of Idaho, and on said date did pass through said light, heat and power wires a strong power or current of electricity, dangerous to the life of any human being who might come in contact therewith.

## IV.

This answering defendant further shows to the Court that on said date the said deceased, Harry M. King, was in the employ of the defendant, Great Shoshone and Twin Falls Water Power Company, a corporation, to do and perform such work for said defendant as might be required of him upon the pole line of said defendant in the construction and repair of said pole line, under an uninsulated high tension power wire, charged with a dangerous and deadly current of electricity, and that while said deceased, Harry M. King, was in the employ of the defendant

as aforesaid under the orders, directions and commands of the defendant's foreman and agent, and while the said defendant was in the operation of and operating the said plant, and while the said deceased was in the performance of arduous and exacting duties, and while his mind and attention was fully and wholly engrossed in performing his duties for said defendant, in the operation and construction of said plant, and stretching and stringing the insulated high tension power wire charged with a deadly current of electricity at a place where he was ordered, directed and commanded to work for said defendant in the operation of said electrical plant by its foreman and agent in charge of said work, the defendant negligently and carelessly failed to ground said wire upon which the deceased was then working, and negligently and carelessly permitted the wire upon which the deceased was working and holding down for said defendant in the operation and construction of said plant under the orders, directions and commands of its agent and foreman, to become fastened under a small bush or tree and to become loosened from said bush or tree and to flip up against the uninsulated heat, light and power wires of said defendant, which was charged and loaded with a dangerous and deadly current of electricity, and to charge and load the wire upon which the deceased was working and holding down with a dangerous and deadly current of electricity by which the said Harry M. King, deceased, was severely shocked, burned and bruised, and from which the said Harry M. King, deceased, died on the

6th day of May, 1913, and left surviving him his widow, Katherine King, and his minor children, Margaret King, age eight years, and Alice King, aged six years, and left no other child nor descendants of deceased child.

## V.

That thereafter on the 29th day of October, 1913, this answering defendant, filed a suit in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Twin Falls, against the Great Shoshone and Twin Falls Water Power Company, a corporation, and one of the defendants herein, for damages in the sum of \$46,480.50 for negligence and carelessness which resulted in the death of the said deceased, Harry M. King; that thereafter the said defendant Company caused said action to be removed to the District Court of the United States for the District of Idaho, Southern Division, where issue was joined in said court and on the 23rd day of September, 1914, said cause was duly tried in said District Court of the United States by a jury and the verdict returned thereafter in the sum of \$5590.00, together with costs and disbursements in the sum of \$174.35; a copy of which judgment is hereto attached, marked Exhibit "A" and made a part of the answer of this answering defendant, and that your petitioner prays that the same may be considered a part of this answer and referred to, to the same effect as if fully set forth in the body of this answer.



VI.

This answering defendant further shows to the Court that the passage or transmission of electric current of high voltage, such as the current from which the said deceased, Harry M. King, was injured and killed through wires or transmission lines, is without any warning whatsoever; that such electrical currents are without color, body, odor or sound, and the presence of such current in the wire can be determined only through the sense of touch, or by electrical apparatus especially designed for detecting the presence thereof. That such wire transmission lines are not of themselves harmless, but when charged with electrical energy become in the highest degree dangerous. That the deceased, Harry M. King, was without means or knowledge when or at what times wires connected with such transmission lines were charged with electrical energy and was compelled while engaged in his ordinary lawful and necessary duties and his daily vocation for defendant to go on and along said highway and in the immediate vicinity of said transmission wires, and in the presence of such hidden dangers, that accidents from contact with wires charged with electrical energy were frequent and inevitable. In the case of even carefully constructed, maintained or operated transmission lines and damages resulting therefrom by public service corporations, and persons interested in such corporations are necessarily incident to the operation of electric power plants and the transmission of electrical energy and such damages become a necessary



expense incident to the operation of such plants and transmission lines and a part of the anticipated and expected expense of such operation, and damages sustained as in the case of Harry M. King, deceased, should be considered on the same basis as claims for materials and supplies used in the operation of such plant, and that the aforesaid judgment is a liability contracted and incurred in the operation, use and enjoyment of the franchises of said corporation, and in the use and privilege of said franchise, and as a running expense of said corporation, and has priority over bonds and mortgages and other indebtedness against the franchise and property of said Company.

#### VII.

This answering defendant further shows to the Court that on November 2, 1914, the Honorable Judge of this Court appointed William T. Wallace Receiver of the Great Shoshone and Twin Falls Water Power Company to take charge of the property and assets of said company and is now in charge of said company and the assets thereof as receiver and conducting and operating the same under the orders and directions of this Court.

#### VIII.

This answering defendant further shows to the Court that prior to the appointment of receiver for the defendant, Great Shoshone and Twin Falls Water Power Company, the said defendant corporation on the 1st day of May, 1910, issued a series of bonds in the aggregate principal sum of not exceeding \$10,-

000,000.00, with interest at the rate of five per cent. per annum, payable semi-annually on the 1st day of May and November of each and every year, and that on November 2nd, 1914, the said defendant, Great Shoshone and Twin Falls Water Power Company, a corporation, defaulted in the payment of the interest due on said mortgage and bond issue and notwithstanding the default of said defendant company in the payment of the interest due on said November 1, 1914, the said plaintiff, the Equitable Trust Company of New York, as a holder of the bonds of said mortgage and bonds of said defendant, Great Shoshone and Twin Falls Water Power Company, a corporation, secured by said mortgage, permitted said defendant to continue in the possession and operation of the property covered by said mortgage and bond issue and in no wise at any time sought to take possession of said property from said defendant, Great Shoshone and Twin Falls Water Power Company, and at no time has an attempt been made by said plaintiff trustee or the said bondholders to take possession of the income being derived from the operation of said property so included in said mortgage, but on the contrary the said defendant, Great Shoshone and Twin Falls Water Power Company, has at all times since the issuance of said mortgage, and the receiver thereafter been permitted to continue in the use and possession of said income derived from the operation of said property in paying the current expense incurred in the operation of such property, and in expending the same in the construction of bet-

terments, enlargements and extensions of said property, and in the payment of interest and principal of said bonds for the benefit of said mortgagee, and the said bondholders and the said Great Shoshone and Twin Falls Water Power Company, a corporation, and defendant herein, and the receiver has expended large sums, the amount of which is unknown to this answering defendant, out of and from the income derived and received from the operation of such property in its construction of betterments, extensions and enlargements, and in paying interest on the underlying bonds, all for the benefit of the property embraced in such mortgage and inuring to the benefit of said bondholders.

#### IX.

This answering defendant further shows to the Court that the mortgage and bond issue of the defendant, Great Shoshone and Twin Falls Water Power Company, to the plaintiff herein, dated May 1, 1910, and supplemental mortgages, dated June 21, 1911, and April 7, 1913, do not cover or convey the gross assets and income of the property of the defendant, Great Shoshone and Twin Falls Water Power Company, but only covers the net assets and income of the defendant, Great Shoshone and Twin Falls Water Power Company, after the trustee or mortgagee has taken possession of the property under said mortgage, and then only subject to the general running and operating expenses of said corporation.

Wherefore, this answering defendant prays for an order or orders of this Court:

*First.* That the plaintiff in this cause of action, the defendant Power Company, and its receiver and defendant, Guy I. Towle, and any other parties to this action, or that may intervene in this cause of action, may be required to show cause, if any they have, why the said judgment so recovered by this answering defendant, and the amount thereof, should not be a preferred claim herein to be paid out of the income from the operation of said property, and if such income be insufficient therefor, that the same be adjudged and decreed a prior lien to the said mortgage and bond issue, and be paid out of the proceeds of the sale of said premises, prior to the payment of said mortgage and bond issue or the sums due and unpaid thereon.

*Second.* That the amount of said judgment be decreed a prior and superior lien against all the assets and property of the said Great Shoshone and Twin Falls Water Power Company, a corporation, and one of the defendants herein, and preferred in its payments to claims of all other persons and creditors including all parties to this action.

*Third.* That the said receiver be directed by an order of this Court to pay the amount of said judgment to this answering defendant out of any income from the operation of said property received by him, as such receiver, and now in his possession, or that may come into his possession, and in the event the

income so in his hands be insufficient to pay the amount of said judgment that the receiver be instructed to pay the same out of the proceeds of the sale of said premises, prior to the payment of the bonds so secured by said mortgage and supplemental mortgages.

*Fourth.* That the defendant, Great Shoshone and Twin Falls Water Power Company, a corporation, be required to set forth and file with this Court within a time set and fixed by the Court, a full statement of the income received by said defendant since the execution of said mortgage, and supplemental mortgages, derived from the operation of said property, and that said defendant company be further required to set forth a full and complete statement of the current expenses and operation of said corporation and business, the sums expended in construction of betterments, enlargements and extensions of the property and the sums and payments made upon interest and principal upon the mortgage indebtedness heretofore alleged and set out.

*Fifth.* That the plaintiff herein be required to set forth a full and complete statement of all the interest and principal received upon said mortgage indebtedness since the execution of said mortgage, and all other sums of money received by said plaintiff and trustee from said defendant, Great Shoshone and Twin Falls Water Power Company, for interest, principal, or otherwise, and that said statement be filed in this Court within a time set and fixed by this Court.



*Sixth.* That the said Receiver, William T. Wallace, be required to set forth and file with this Court a full and complete statement of all the income received of said receiver in the operation of said Great Shoshone and Twin Falls Water Power Company since taking possession by him as Receiver, together with a full and complete statement as to the sums expended by said Receiver in the construction of betterments, enlargements and extensions of said property, and the sum and payments, if any, made to the plaintiff in this cause of action in interest and principal upon the mortgage indebtedness heretofore alleged and set out in this answer, and that said Receiver be required to make and file with this Court said statement within such time as may be fixed by the Court to file such statement.

*Seventh.* That this answering defendant may have such other and further relief, judgments and decrees as to this Court may seem just and equitable, the premises considered.

JAMES H. WISE,

Attorney for Defendant, Carl J. Hahn.

(Duly verified).



costs and disbursements in this action, taxed in the sum of \$174.35.

Filed Sept. 23, 1914. A. L. Richardson, Clerk.

Endorsed: Filed May 15, 1915.

A. L. Richardson, Clerk.

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(Title of Court and Cause.)

In Equity—No. 526.

REPLY OF PLAINTIFF TO PLEADING DENOMINATED "ANSWER OF CARL J. HAHN, ADMINISTRATOR OF THE ESTATE OF HARRY M. KING, DECEASED."

*And now comes* The Equitable Trust Company of New York, plaintiff in the above cause, saving and reserving to itself all and all manner of advantages which may be had and taken, by motion or otherwise, to the many errors, uncertainties and insufficiencies of the alleged answer or counter-claim of the defendant Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, and for reply thereto saith that it doth and will aver, maintain and prove its said Bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the pleading of said defendant, denominated "Answer of Carl J. Hahn, Administrator of the Estate of Harry M. King, Deceased," is very uncertain, evasive, and insufficient in law to be answered or replied unto by this replicant, all which matters and things this replicant is ready to aver, maintain and prove, as this

Honorable Court shall direct, and humbly prays as in and by its said Bill it hath already prayed.

MURRAY, PRENTICE & HOWLAND,  
SULLIVAN & SULLIVAN,  
RICHARDS & HAGA,

Solicitors for Complainant.

CHARLES P. HOWLAND,

OLIVER O. HAGA,

Of Counsel.

Endorsed: Filed Oct. 2, 1915.

A. L. Richardson, Clerk.

By Pearl E. Zanger, Deputy.

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(Title of Court and Cause.)

ANSWER OF GUY I. TOWLE, DEFENDANT.

The above named defendant, Guy I. Towle, now and at all times saving to himself all and all manner of benefit and advantage of exception, or otherwise that can be had or may be had or taken to the many errors, uncertainties and imperfections in complainant's Bill of Complaint (hereinafter called the "Bill") and complainant's Supplemental Bill of Complaint (hereinafter called "the Supplemental Bill") contained, for answer thereto, or to so much and such parts thereof as they are advised it is material or necessary for them to make answer to, and answering, say:

1. That at all places hereinafter in this answer where the terms defendants and the correlative plurals thereof are used, the same are meant to refer to

and should be construed as referring solely to this answering defendant, Guy I. Towle.

These defendants say that the following allegations made in the Bill are true, and they admit that:

(The paragraphs omitted here are identical with the paragraphs in the joint answer of L. M. Plumer and E. B. Scull, Executors of the estate of L. L. McClelland, deceased, set forth in this record, from paragraph one to paragraph nineteen inclusive and from paragraph twenty-three to the signatures of L. M. Plumer and E. B. Scull, and their attorneys.)

20.

These defendants deny that the interests of Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, or of this defendant, Guy I. Towle, or of any other creditor are subject to or inferior to the interest of complainant herein, in so far as complainant claims a lien upon personal or mixed property by virtue of said deed of trust and supplemental mortgages.

21.

And these defendants allege that heretofore on the 2nd day of November, 1914, in this Court, this defendant Guy I. Towle filed his complaint in this Court alleging among other things in said complaint in that action which was entitled in this Court, Guy I. Towle, Plaintiff, vs. The Great Shoshone and Twin Falls Water Power Company, Defendant, that said Great Shoshone and Twin Falls Water Power Company was justly and truly indebted to him in the



sum of \$12,857.29 with interest thereon at the rate of six per cent per annum from the 26th day of May, 1913, upon a demand promissory note of the said defendant company, of which note the defendant Guy I. Towle was on the said 2nd day of November, 1914, and still is the owner; that said claim came on for hearing in this Court on the 23rd day of October, 1915, in chambers, S. H. Hays appearing for the Receiver of said defendant Company and the Receiver thereof, William T. Wallace, also appearing in person, and Karl Paine appearing for this defendant Guy I. Towle; whereupon, the Honorable Judge of this Court, being satisfied in the premises, on the 23rd day of October, 1915, duly allowed said claim and approved and adjudged said claim to be a valid and liquidated claim against the said Great Shoshone and Twin Falls Water Power Company in the sum of \$13,963.01.

## 22.

These defendants allege that at the said time, October 23, 1915, and for some time prior thereto, since the 2nd day of November, 1914, all of the property of the Great Shoshone and Twin Falls Water Power Company had been and now is in the control of and under the supervision of this Court acting through said Receiver, William T. Wallace, and that these defendants have not now and have not had an opportunity to bring a suit upon this debt and claim against the Great Shoshone and Twin Falls Water Power Company and obtain a lien by having a writ

of attachment or other writ or process issued out of this or any other Court, and for the further reason that this defendant Guy I. Towle and other creditors of the said Company were forbidden by an order of this Court, made and entered on the 2nd day of November, 1914, from attaching or molesting the property of the said defendant Company.

23.

These defendants allege that said deed of trust as set forth in the Bill and marked Exhibit "A" purports to cover and subject to its lien, real, personal and mixed property but that neither the complainant nor its predecessors in interest, nor the Great Shoshone and Twin Falls Water Power Company, the mortgagor therein, or any one of them ever caused said mortgage or deed of trust to be accompanied by the affidavit of the mortgagor; that said mortgage or deed of trust is or was made in good faith and without design to hinder, delay or defraud creditors; and these defendants allege that said mortgage or deed of trust is not and has not been filed for record with the county recorder of the counties where the personal and mixed property described therein was and is kept; and that the recorder in said counties did not and has not since indorsed on the back the time of receiving it, and did not and has not filed the same in his office, to be kept there for the inspection of all persons interested, and that said deed of trust was not entered in a book showing a minute of all mortgages of personal property as in such mortgages of personal and mixed property the stat-

ute, Sections 3408 and 3409, Idaho Revised Codes, provide.

GUY I. TOWLE.

By KARL PAINE.

KARL PAINE,

Solicitor for Guy I. Towle.

(Duly verified.)

Endorsed: Filed Oct. 23, 1915.

W. D. McReynolds, Clerk.

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(Title of Court and Cause.)

In Equity—No. 526.

MOTION.

*Now comes* the complainant and moves the Court to strike out the answer of Guy I. Towle, one of the defendants in said cause, filed October 23rd, 1915, for the reason that the allegations therein contained fail to set forth matter sufficient to disentitle complainant to the relief sought in the Bill.

MURRAY, PRENTICE & HOWLAND,

SULLIVAN & SULLIVAN,

RICHARDS & HAGA,

Solicitors for Complainant.

Endorsed: Filed Oct. 25, 1915.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

PETITION OF L. L. PLUMER AND E. B. SCULL,  
EXECUTORS OF THE ESTATE OF L. L. Mc-  
CLELLAND, DECEASED, TO INTERVENE  
AND BE MADE PARTIES DEFENDANT.

*To the Honorable the Judge of the District Court of  
the United States for the District of Idaho, South-  
ern Division:*

The petition of L. M. Plumer and E. B. Scull, Exe-  
cutors of the estate of L. L. McClelland, deceased,  
respectfully shows:

1. That your petitioners are now the duly ap-  
pointed, qualified and acting executors of the estate  
of L. L. McClelland, and as such, duly authorized to  
prosecute this petition on the claim hereinafter men-  
tioned.

2. That, as such executors, your petitioners are  
now the owners and holders of a valid claim against  
the Great Shoshone and Twin Falls Water Power  
Company in the sum of \$15,625.00. That on or about  
the 2nd day of July, 1914, the said L. L. McClelland  
came into the possession, for a valuable considera-  
tion, of a negotiable promissory note made, executed  
and delivered by said Great Shoshone and Twin Falls  
Water Power Company to said L. L. McClelland, in  
the principal sum of \$20,000.00, payable five years  
after said July 2nd, 1914, at any bank in New York  
City, without interest.

That on or prior to the 2nd day of November, 1914,  
the said Great Shoshone and Twin Falls Water Pow-  
er Company became insolvent and now is insolvent;

that on or about the said 2nd day of November, the defendant, Guy I. Towle, filed his bill of complaint in this Court against the defendant, Great Shoshone and Twin Falls Water Power Company, praying for the appointment of a receiver or receivers for said company and its property; that thereupon and on or about the 2nd day of November, 1914, this Court, by an order made that day, appointed the defendant, William T. Wallace, Receiver of the Great Shoshone and Twin Falls Water Power Company and of all of its property, and that said William T. Wallace duly qualified as such receiver and entered into the possession of said property and now is in possession of all of the property of said Great Shoshone and Twin Falls Water Power Company.

3. That upon the 5th day of May, 1915, this Court made an order that all creditors of the Great Shoshone and Twin Falls Water Power Company should file their claims with said receiver on or before the 10th day of August, 1915; that pursuant to such order the petitioners herein filed their said claim for \$20,000.00; that on the 16th day of October, 1915, upon a hearing upon said claim in chambers this Court allowed said claim and approved said claim at its present worth as of the date of the appointment of said receiver, in the sum of \$15,625.00.

That said sum of \$15,625.00 is now and since said 16th day of October, 1915, has been due, owing and unpaid, but that said receiver has not paid the same, and said receiver now fails and refuses to pay the same; that your petitioners have exhausted their



legal remedies; that ever since the said 16th day of October, 1915, when this claim of petitioners became due, it has been impossible for petitioners to sue on said claim at law, and attach, as said property and all thereof of the Great Shoshone and Twin Falls Water Power Company has been and is in the hands of said receiver, and all legal remedies, if any there be, are fruitless, and petitioners have been and are wholly unable to collect their said claim by pursuing their legal remedies.

4. That on the 14th day of April, 1915, complainant filed herein its bill of complaint seeking to foreclose a certain deed of trust and supplemental mortgage against all of the property of the said Great Shoshone and Twin Falls Water Power Company and seeking to have all of said property sold to pay a claim of \$2,230,000.00 which complainant claims due it. That unless these petitioners, creditors, are allowed to come in and answer the Bill of Complaint herein and set up their defenses, your petitioners will be precluded from participating in the distribution of the assets of said Great Shoshone and Twin Falls Water Power Company and complainant will be allowed to take all the property or the proceeds of the sale of all of said property to satisfy its claim of \$2,230,000.00.

5. That said deed of trust and mortgages set up in complainant's Bill are void as to personal and mixed property:

*First:* As said mortgage and first supplemental mortgage was not accompanied by the affida-

vit of good faith and valuable consideration required by Section 3408, Idaho Revised Codes.

*Second:* As said mortgage and first and second supplemental mortgages were not filed and indexed and recorded as a chattel mortgage as required by Section 3409, Idaho Revised Codes.

*Third:* As said mortgages provided for the taking and using of the incomes, revenues, rents, issues and profits of the Great Shoshone and Twin Falls Water Power Company and to enjoy the income arising from the property intended to be covered by said mortgages or deeds of trust by the mortgagor contrary to law.

6. That your petitioners should be allowed to intervene and plead to complainant's Bill of Complaint and set up their defenses and otherwise protect their rights. That your petitioners are informed and believe that unless they can have their claim settled out of the property which complainant claims is covered by its deed of trust and supplemental mortgages, that your petitioner's claim will be valueless.

*Wherefore,* your petitioners pray that they be allowed to intervene herein and be made parties defendant.

L. M. PLUMER,

E. B. SCULL,

As Executors of the Estate of L. L. McClelland, Deceased, by Paris Martin.

MARTIN & CAMERON, Solicitors.

(Duly verified.)

Endorsed: Filed Oct. 23, 1915.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

ORDER ALLOWING L. M. PLUMER AND E. B. SCULL, EXECUTORS OF THE ESTATE OF L. L. McCLELLAND, DECEASED, TO INTERVENE AND BE MADE PARTIES DEFENDANT.

The petition of L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, to intervene and be made parties defendant herein having this day been presented to this Court, and it appearing to the Court from the matters stated therein that said L. M. Plumer and E. B. Scull should be allowed to intervene and be made parties herein, and the Court being fully advised in the premises;

*It is hereby ordered* that said petition be granted and the said L. M. Plumer and E. B. Scull, as executors of the estate of L. L. McClelland, are hereby made parties defendant, and are hereby permitted to plead herein and file their pleadings in this cause, and it is further ordered that henceforth said defendants or their solicitors, Martin & Cameron, be notified of all proceedings herein.

(Signed) FRANK S. DIETRICH,

Oct. 23, 1915.

District Judge.

Endorsed: Filed Oct. 23, 1915.

W. D. McReynolds, Clerk.

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(Title of Court and Cause.)

JOINT ANSWER.

The intervening defendants, L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClel-

land, deceased, now and at all times saving to themselves all and all manner of benefit and advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in complainant's Bill of Complaint (hereinafter called "the Bill"), and complainant's Supplemental Bill of Complaint (hereinafter called "the Supplemental Bill"), and complainant's Amended Bill contained for answer thereto, or to so much and such parts thereof as they are advised it is material or necessary for them to make answer to, and jointly answering say:

## 1.

These defendants say:

(a) That leave to intervene in the above entitled case as defendants and to file this answer in intervention has heretofore, before the filing hereof, been obtained from the above entitled court.

These defendants say that the following allegations made in the Bill are true, and they admit that:

First: The complainant is a corporation organized and existing under and by virtue of the laws of the State of New York, having its principal office and place of business at No. 37 Wall Street, in the Borough of Manhattan, City of New York, in said State, and is authorized by law and its certificate of incorporation to accept and execute trusts of the character hereinafter set forth.

## 2.

And these defendants admit that:

Second: The defendant, Great Shoshone and Twin

Falls Water Power Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, of which State it is a citizen, and having its statutory office in Wilmington in the said State, but has all of its property and business in the State of Idaho, where it is duly licensed to carry on business and where its principal office and place of business is at Twin Falls, in Twin Falls County; and that William T. Wallace is a citizen of the State of Idaho and a resident of Twin Falls County in said State; and that the defendant, Guy I. Towle, is a citizen of the State of Idaho and a resident of Lincoln County, in said State; and that the defendant, Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, is a citizen and resident of the State of Idaho.

3.

And these defendants admit the allegations of the "Third" paragraph of the Bill filed herein.

4.

These defendants deny that on or about the 21st day of July, 1910, or at any other time or at all, that said Great Shoshone and Twin Falls Water Power Company, *duly* made and executed to the Trust Company of America, of the City of New York and State of New York, and James D. O'Neil, of the City of Pittsburgh, State of Pennsylvania, or to any one else or at all, as Trustee, or otherwise, its certain, or any certain, deed of trust bearing date May 1, 1910, a copy of which is annexed to the Bill and marked Exhibit "A".



These defendants deny that in and by, or in or by, said deed of trust or otherwise, in order to secure the due and punctual payment of the principal and interest, of all of the aforesaid bonds and at any time outstanding, or for any purpose or at all granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred, set over or in any manner whatsoever transferred or parted with, unto any one, or at all all of the, or any of the parcels, premises, properties, rights, permits, plants, dams, reservoirs, flumes, canals, tunnels, raceways, controlling works, machinery, lines, buildings, improvements, water wheels, weirs, generators, dynamos, switchboards, transformers and all machinery, appliances, appurtenances, franchises, or all or any other property either personal or mixed of said Great Shoshone and Twin Falls Water Power Company, whether then owned or thereafter acquired as enumerated or referred to in said deed of trust dated May 1, 1910, or otherwise, in any manner whatsoever.

## 5.

These defendants admit the allegation contained in paragraph "Fifth" of the Bill that, Fifth: The tangible property described in and covered by said deed of trust is situated in the Counties of Twin Falls, Lincoln, Elmore, Cassia, Owyhee and Ada, in the State of Idaho, and elsewhere in the Southern Division of the District of Idaho.

These defendants deny the allegation contained in paragraph "Fifth" of the Bill that said deed of trust was *duly* or otherwise recorded in the office of the

County Recorder of Twin Falls County, State of Idaho, on August 2nd, 1910, or at any time or at all, and recorded in Book 14 of Mortgages at pages 54 to 88 inclusive, and that the fees and taxes, or fees or taxes thereon were paid; deny that said deed of trust was duly, or otherwise, recorded in the office of the Recorder of Lincoln County, State of Idaho, on the 2nd day of September, 1913, or at any other time or at all, in Book 39 of Mortgages at page 210, and the fees and taxes, or fees or taxes thereon were paid; deny that said deed of trust was duly, or otherwise, recorded in the office of the recorder of Cassia County, State of Idaho, on the 13th day of September, 1913, or at any other time or at all, in Book 7 of Mortgages at page 37, and the fees and taxes thereon paid; deny that said deed of trust was duly or otherwise recorded in the office of the recorder of Owyhee County, State of Idaho, on the 16th day of October, 1913, or any other time or at all, in Book 10 of Mortgages, at page 250, and the fees and taxes thereon paid; and deny that said deed of trust was duly, or otherwise, recorded in the office of the recorder of Ada County, State of Idaho, on the 30th day of September, 1913, or at any other time or at all, in Book 74 of Mortgages at pages 118-183, and the fees and taxes thereon paid.

6.

These defendants deny the allegations contained in paragraph "Sixth" of the Bill that on or about the 21st day of June, 1911, or any other time or at all, said Great Shoshone and Twin Falls Water Power

Company duly, or otherwise, made, executed or delivered to said The Trust Company of America or said James D. O'Neil, as trustees, or otherwise, a certain, or any instrument or indenture by way of Supplemental Mortgage bearing date June 21, 1911, a copy of which is annexed to the Bill and marked Exhibit "B". Deny that in or by said Supplemental Mortgage dated June 21, 1911, or in any manner or at all, said Great Shoshone and Twin Falls Water Power Company, for any purpose whatsoever, granted, bargained, sold, conveyed or confirmed unto the said The Trust Company of America or said James D. O'Neil, as trustees, or otherwise, or to their successor or successors, certain, or any property, except the real property therein set forth.

Deny that said Supplemental Mortgage, dated June 21, 1911, was *duly*, or otherwise, recorded, except for a real estate mortgage, in the office of the Recorder of said Lincoln County, State of Idaho, on the 30th day of June, 1911, in Book 20 of Deeds at page 208.

## 7.

These defendants admit that The Equitable Trust Company of New York succeeded to all the rights, duties, powers and property of said The Trust Company of America, under the said Deed of Trust dated May 1, 1910, and under the said Supplemental Mortgage dated June 21, 1911, and has become and now is trustee thereunder and is now acting as such trustee, except that these defendants deny that the said Deed of Trust, or said Supplemental Mortgage ever

in any manner conveyed, transferred or set over to a trustee or any other person, or corporation or association, the personal or mixed property of the said Great Shoshone and Twin Falls Water Power Company.

8.

These defendants deny that on or about the 7th day of April, 1913, or at any other time or at all, said Great Shoshone and Twin Falls Water Power Company, being thereunto duly authorized by its board of directors, and by its stockholders, duly, or otherwise, made, executed or delivered to complainant or to James D. O'Neil, as trustees, or otherwise, a certain instrument, entitled, "Supplemental Mortgage," bearing date April 7, 1913, a copy of which is attached to the Bill and marked Exhibit "C". These defendants deny that in or by said Supplemental Mortgage said Great Shoshone and Twin Falls Water Power Company, for any purpose granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred or set over to complainant or said James D. O'Neil, as trustees, or their successor or successors in trust, certain or any property whatsoever except the real property, and specifically deny that the personal and mixed property was in any manner conveyed, as fully or otherwise set forth in said Supplemental Mortgage.

9.

These defendants deny that said Supplemental Mortgage dated April 7th, 1913, was duly, or otherwise, recorded, except as a real estate mortgage, in



the office of the Recorder of Lincoln County, State of Idaho, on the 30th day of July, 1913, or at any other time or at all, in Book 18 of Mortgages, page 285, and deny that said Supplemental Mortgage dated April 7, 1913, was duly, or otherwise, recorded, except as a real estate mortgage, in the office of the Recorder of Lincoln County, State of Idaho, on the 15th day of July, 1913, or at any other time or at all, in Book 23 of Mortgages, page 552, and deny that said Supplemental Mortgage dated April 7, 1913, was duly, or otherwise, recorded, except as a real estate mortgage, in the office of the Recorder of Owyhee County, State of Idaho, on the 25th day of September, 1913, or at any other time or at all, in Book 10 of Mortgages, page 221; and deny that said Supplemental Mortgage was duly, or otherwise, recorded except as a real estate mortgage, in the office of the Recorder of Elmore County, State of Idaho, on the 13th day of September, 1913, or at any other time or at all, in Book 39 of Mortgages, page 279; and deny Supplemental Mortgage, dated April 7, 1913, was duly, or otherwise, recorded, except as a real estate mortgage, in the office of the Recorder of Gooding County, State of Idaho, on the 15th day of August, 1913, or at any other time or at all; and deny that said Supplemental Mortgage, dated April 7th, 1913, was duly, or otherwise, recorded, except as a real estate mortgage, in the office of the Recorder of Minidoka County, State of Idaho, on the 27th day of August, 1913, or at any other time or at all, in Book 1 of Mortgages, page 269; and deny that said Supple-



mental Mortgage dated April 7, 1913, was duly, or otherwise, recorded, except as a real estate mortgage, in the office of the Recorder of Ada County, State of Idaho, on the 7th day of January, 1914, or at any other time or at all, in Book 74 of Mortgages, page 396; and deny that said Supplemental Mortgage was duly, or otherwise, recorded, except as a real estate mortgage, in the office of the Recorder of Cassia County, State of Idaho, on the 28th day of July, 1913, or at any other time or at all, in Book 6 of Mortgages, page 575.

These defendants deny that complainant duly, or otherwise, accepted the trusts created by said Supplemental Mortgage dated April 7, 1915, except as to the real property, and denies that all or any of the bonds issued and outstanding under the said Trust Deed dated May 1st, 1910, are entitled to the benefit of the security, except the real property of said Supplemental Mortgage dated April 7, 1913, or of said Trust Deed dated May 1st, 1910, or the above mentioned Supplemental Mortgage dated June 21, 1911.

10.

These defendants admit that after the execution and delivery of said Deed of Trust, dated May 1st, 1910, said Great Shoshone and Twin Falls Water Power Company made and executed bonds under said Deed of Trust to the aggregate principal amount of \$2,230,000.00, all of which bonds were authenticated by the certificate of the Trust Company of America, as Trustee, or by complainant as successor trustee endorsed thereon, as provided in said bonds and Deed

of Trust; admits that said bonds were issued by said Great Shoshone and Twin Falls Water Power Company for a valuable consideration; but these defendants deny that said bonds were issued in accordance with law, and denies that said bonds are valid and outstanding obligations of the Great Shoshone and Twin Falls Water Power Company, and deny that the bondholders are entitled to the benefits of said Deed of Trust and of the above mentioned Supplemental Mortgages dated June 21, 1911, and April 7, 1913, respectively, as against these defendants, creditors of said Great Shoshone and Twin Falls Water Power Company.

## 11.

These defendants admit the allegations set forth in the Bill in paragraph "Eleventh," except that these defendants deny that on said November 2nd, 1914, said Great Shoshone and Twin Falls Water Power Company wholly, on said date, made default in the covenants and conditions of said mortgage.

## 12.

These defendants admit the allegations set forth in the Bill, in paragraph "Twelfth" thereof, except that these defendants deny that on the date the Bill herein was filed, to-wit, on the 14th day of April, 1915, that said Great Shoshone and Twin Falls Water Power Company had not wholly made default in respect to the interest payment which fell due on the 2nd day of November, 1914, but which was not wholly in default until six months thereafter.

13.

These defendants admit the allegations set forth in the Bill, in paragraph "Thirteenth" thereof, except that these defendants deny that complainant became and is now vested with or should be entitled to exercise at all, or any rights whatsoever, or powers, over the personal or mixed property described in said Deed of Trust or in said Supplemental Mortgages.

14.

These defendants admit the allegations of the Bill, in paragraph "Fourteenth" thereof.

15.

These defendants admit the allegations of the Bill, set forth in paragraph "Fifteenth" thereof.

16.

These defendants deny that at the time of the execution of said Deed of Trust or at any other time or at all, that said Great Shoshone and Twin Falls Water Power Company was the owner of property of various kinds, which was referred to or generally described in, or subjected to said Deed of Trust or which was not specifically described therein; and deny that since the date of the execution or delivery of said Deed of Trust dated May 1, 1910, certain or any other property, real, personal or mixed, or rights or interests (other than as specified or enumerated in said Supplemental Mortgages dated June 21, 1911, and April 7, 1913) have become subject to the lien of said Deed of Trust for any reason whatsoever, and that as to personal and mixed property

these defendants allege that such property never became and is not now subject to said or any Deed of Trust or said or any Supplemental Mortgages.

17.

These defendants admit the allegations set forth in paragraph "Seventeenth" of the Bill, except that these defendants deny that all other property other than that described in said paragraph "Seventeenth" of the kind or nature described in said Deed of Trust and owned by said Great Shoshone and Twin Falls Water Power Company at the time of the execution and delivery of said Deed of Trust or acquired by said Great Shoshone and Twin Falls Water Power Company since that time is subjected to the lien or any lien of said Deed of Trust; that all of the \$2,-230,000.00 in principal amount of bonds issued and outstanding are entitled to the benefit of such lien except as to the real estate described in said Deed of Trust.

18.

These defendants admit the allegations set forth in paragraph "Eighteenth" of the Bill.

19.

These defendants admit the allegations of paragraph "Nineteenth" of the Bill.

20.

These defendants deny that the interests of Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, or of any other creditor, are subject to interest of complainant herein, in so far as com-

plainant claims a lien upon personal or mixed property by virtue of the said deed of trust and supplemental mortgages.

21.

And these defendants allege that on the 10th day of August, 1915, pursuant to an order of this Court, made in the cause entitled Guy I. Towle, plaintiff, against Great Shoshone and Twin Falls Water Power Company, defendant, brought in this Court, that these defendants, as executors of the estate of L. L. McClelland, deceased, duly filed a claim against the Great Shoshone and Twin Falls Water Power Company based upon a promissory note dated July 2nd, 1914, in the principal sum of \$20,000.00, due on the 2nd day of July, 1919, payable to L. L. McClelland and made, executed and delivered by the Great Shoshone and Twin Falls Water Power Company; that said claim came on for hearing before this Court on the 16th day of October, 1915, in chambers, S. H. Hays, Esquire, appearing for the Receiver, and William T. Wallace, Receiver, also appearing in person, and Martin & Cameron appearing for these defendants, whereupon, the judge of this Court being satisfied in the premises, on the 16th day of October, 1915, duly allowed said claim and approved and adjudged said claim to be a valid and liquidated claim against the said Great Shoshone and Twin Falls Water Power Company in the sum of \$15,625.00.

22.

These defendants allege that at the said time, October 16th, 1915, and for some time prior thereto,



since the 2nd day of November, 1914, all of the property of the said Great Shoshone and Twin Falls Water Power Company had been and now is in the control and under the supervision of this Court acting through said Receiver, W. T. Wallace, and that these defendants have not now and have not had an opportunity to bring a suit upon this debt of the Great Shoshone and Twin Falls Water Power Company and obtain a lien by having a writ of attachment or other writ or process issued out of this or any other Court, and for the further reason that this debt, according to its terms, was not to have been due until July 2nd, 1919, had it not become due by operation of law, on the 2nd day of November, 1914, ever since which time, as above said, the property of the said Great Shoshone and Twin Falls Water Power Company has been in the hands of said Receiver.

## 23.

These defendants allege that said deed of trust, as set forth in the Bill marked Exhibit "A", purports to cover and subject to its lien, real, personal and mixed property, but that neither the complainant nor its predecessors in interest, nor the Great Shoshone and Twin Falls Water Power Company, the mortgagor therein, or any one for them ever caused said mortgage or deed of trust to be accompanied by the affidavit of the mortgagor; that said mortgage or deed of trust is or was made in good faith and without design to hinder, delay or defraud creditors; and these defendants allege that said mortgage or deed of trust is not and has not been filed for record with the County Recorder of the counties where the per-

sonal and mixed property described therein was and is kept; and that the Recorder in said counties did not and has not since indorsed on the back the time of receiving it, and did not and has not filed the same in his office, to be kept there for the inspection of all persons interested, and that said deed of trust was not entered in a book showing a minute of all mortgages of personal property as in such mortgages of personal and mixed property the statute, Sections 3408 and 3409, Idaho Revised Codes, provide.

24.

These defendants allege that said Supplemental Mortgage dated June 21, 1911, and marked Exhibit "B" in the Bill, purports to cover and subject to its lien, real, personal and mixed property, but that neither the complainant nor its predecessors in interest, nor the Great Shoshone and Twin Falls Water Power Company, the mortgagor therein, or any one for them, ever caused said Supplemental Mortgage to be accompanied by the affidavit of the mortgagor that said Supplemental Mortgage is or was made in good faith and without design to hinder, delay or defraud creditors; and these defendants allege that said Supplemental Mortgage is not and has not been filed for record with the County Recorder of the Counties where the personal and mixed property described therein was and is kept; and that the Recorder in said Counties did not and has not since indorsed on the back the time of receiving it, and did not and has not filed the same in his office, to be kept there for the inspection of all persons interested, and

that said Supplemental Mortgage was not entered in a book showing a minute of all mortgages of personal property, as in such mortgages of personal and mixed property the statute, Sections 3408 and 3409, Idaho Revised Codes, provides.

These defendants allege that said deed of trust and supplemental mortgages, B and C, provide for the mortgaging to the complainant, the tolls, incomes and revenues of the Great Shoshone and Twin Falls Water Power Company, and further provide that the said mortgagor company may take and use the incomes, revenues, rents, issues and profits of the said company and the property mortgaged in said deed of trust and supplemental mortgages, to the use and benefit of said Great Shoshone and Twin Falls Water Power Company, and said provisions render said deed of trust and supplemental mortgages null and void as to these defendants, creditors of said company, as to the tolls, incomes, revenues, issues, rents and profits of said Company, and its property attempted to be mortgaged, and also as to all other property mentioned in complainant's Bill of Complaint and the supplements and amendments thereto, as being covered by the deed of trust and mortgages therein mentioned.

## 25.

These defendants allege that said Supplemental Mortgage dated the 7th day of April, 1913, and marked Exhibit "C" in the Bill, purports to cover and subject to its lien, real, personal and mixed property, but that neither the complainant nor its pre-

decessors in interest, nor any one for them, ever filed said Supplemental Mortgage with the County Recorder of the Counties where the personal and mixed property described therein was and is kept; and that the Recorder in said Counties did not and has not since endorsed on the back the time of receiving it, and did not and has not filed the same in his office, to be kept there for the inspection of all persons interested, and that said Supplemental Mortgage was not entered in a book showing a minute of all mortgages of personal property, as in such mortgages of personal and mixed property the statute, Sections 3408 and 3409, Idaho Revised Codes, provides.

26.

These defendants allege that since the property, real, personal and mixed, of the Great Shoshone and Twin Falls Water Power Company is in the control and possession of this Court ever since November 2nd, 1914, and that since it is not possible, by law, to obtain a lien on said property, and since by operation of law, the complainant herein<sup>e</sup> foreclosing its deed of trust and supplemental mortgages has no prior lien upon the personal and mixed property of the Great Shoshone and Twin Falls Water Power Company, on account of not accompanying said mortgage or deed of trust, and supplemental mortgages, with an affidavit of good faith as required by statute and on account of not recording said mortgage and supplemental mortgages as a chattel mortgage as required by law, that said mortgage or deed of trust and supplemental mortgages are void as against



these defendants, creditors, and that these defendants should be entitled to a prior lien upon said personal and mixed property of said Great Shoshone and Twin Falls Water Power Company as of the date of August 10th, 1915, as these defendants would otherwise have been entitled to an attachment lien had not the property of said Great Shoshone and Twin Falls Water Power Company been in the hands of the Court.

## 27.

That as to all the personal and mixed property of the said Great Shoshone and Twin Falls Water Power Company, the allowed and adjudicated claim of these defendants is prior and paramount to the claims of complainant or its deed of trust or supplemental mortgages.

## 28.

These defendants answer the Supplemental Bill of Complaint (hereinafter called "the Supplemental Bill") and admit, deny and allege as follows:

## 1.

Admit the allegations of paragraph "First" of said "Supplemental Bill".

## 2.

Admit the allegations of paragraphs "Second", "Third", "Fourth", "Fifth" and "Sixth" of said Supplemental Bill.

## 3.

These defendants deny that the defendants named in said Supplemental Bill have claims to some right, title or interest in the personal and mixed property



pretended to be covered by said deed of trust and supplemental mortgages which claims are subsequent to complainant's lien by virtue of said deed of trust and supplemental mortgages.

*Wherefore*, these defendants pray:

1. That said deed of trust and supplemental mortgages be declared null and void as a lien upon personal and mixed property of said Great Shoshone and Twin Falls Water Power Company.

2. That the Receiver of said personal and mixed property be required to satisfy the claim of these defendants first out of said personal and mixed property, or the proceeds thereon; and that these defendants, prior to the time of sale, if necessary on account of the claims of other creditors, be held to have the equivalent of a prior lien upon enough of the personal and mixed property of said Great Shoshone and Twin Falls Water Power Company to insure the payment of the claim of these defendants.

3. That these defendants may be awarded their costs and disbursements herein, and such other and further relief as to the Court may seem just and equitable.

L. M. PLUMER and  
E. B. SCULL,

Executors of the Estate of L. L. McClelland, Deceased.

By MARTIN & CAMERON,  
Their Attorneys.

MARTIN & CAMERON, Solicitors.

(Duly verified.)

Endorsed: Filed Oct. 23, 1915.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

MOTION.

*Now comes* the complainant and moves the Court as follows:

(a) To vacate and set aside the order made herein on the 23rd day of October, 1915, allowing L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, to intervene and be made parties defendant in this cause, which order was made *ex parte* and without notice of application therefor to complainant, for the reason that the petition therefor filed by said intervenors is insufficient in law and does not set forth facts sufficient to entitle said parties to intervene or be made parties defendant in said cause.

(b) To dismiss the petition of the said L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, to intervene and be made parties defendant, for the reason that the said petition is wholly insufficient in law and equity and does not set forth facts sufficient to entitle said petitioners to intervene or be made parties defendant in said cause.

(c) To strike out what is denominated a "Joint Answer" of the defendants and intervenors L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, for the reason that it appears therefrom that said intervenors have not such interest in this litigation as will entitle them to intervene and be made parties defendant in said cause, and the matters set forth in said alleged joint

answer do not constitute a proper defense to complainant's Bill of Foreclosure.

MURRAY, PRENTICE & HOWLAND,  
SULLIVAN & SULLIVAN,  
RICHARDS & HAGA,

Solicitors for Complainant.

Endorsed: Filed Oct. 25, 1915.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

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(Title of Court and Cause.)

PETITION OF JAKE M. SHANK TO INTER-  
VENE AND BE MADE A PARTY DEFEND-  
ANT.

*To the Honorable, the Judge of the District Court  
of the United States, for the District of Idaho,  
Southern Division:*

The petition of Jake M. Shank respectfully shows:

1.

That your petitioner is now the owner and holder of a valid claim against the Great Shoshone and Twin Falls Water Power Company, in the sum of Four Thousand, Three Hundred Ninety Dollars.

2.

That on or prior to the 2nd day of November, 1914, the said Great Shoshone and Twin Falls Water Power Company became insolvent and now is insolvent; that on or about the said 2nd day of November, the defendant, Guy I. Towle, filed his bill of complaint in this Court against the defendant, Great Shoshone and Twin Falls Water Power Company, praying for

the appointment of a receiver or receivers of said company and its property; that thereupon and on or about the 2nd day of November, 1914, this Court, by an order made that day, appointed the defendant William T. Wallace, Receiver of the Great Shoshone and Twin Falls Water Power Company and of all of its property, and that said William T. Wallace duly qualified as such receiver and entered into the possession of said property and now is in possession of all of the property of said Great Shoshone and Twin Falls Water Power Company.

## 3.

That upon the 5th day of May, 1915, this Court made an order that all creditors of the Great Shoshone and Twin Falls Water Power Company should file their claims with the said receiver on or before the 10th day of August, 1915; that pursuant to such order the petitioner herein filed his said claim for Four Thousand Dollars; that on the 25th day of October, 1915, upon a hearing upon said claim in chambers, this Court allowed said claim and approved said claim at its present worth as of the date of the appointment of said receiver in the sum of Four Thousand Three Hundred Ninety Dollars.

That said sum of Four Thousand Three Hundred Ninety Dollars is now and since the 25th day of October, 1915, has been due, owing and unpaid, but that said receiver has not paid the same, and said receiver now fails and refuses to pay the same; that your petitioner has exhausted his legal remedies; that ever since the 25th day of October, 1915, when this

claim of petitioner became due, it has been impossible for petitioner to sue on said claim at law, and attach, as said property and all thereof of the Great Shoshone and Twin Falls Water Power Company has been and is in the hands of said receiver and all legal remedies, if any there be, are fruitless, and petitioner has been and is wholly unable to collect his said claim by pursuing his legal remedies.

4.

That on the 14th day of April, 1915, complainant filed herein its bill of complaint seeking to foreclose a certain deed of trust and supplemental mortgages against all of the property of the said Great Shoshone and Twin Falls Water Power Company and seeking to have all of said property sold to pay a claim of \$2,230,000.00, which complainant claims due it. That unless the petitioner, a creditor, is allowed to come in and answer the bill of complaint herein and set up his defense, your petitioner will be precluded from participating in the distribution of the assets of the Great Shoshone and Twin Falls Water Power Company and complainant will be allowed to take all the property or the proceeds of sale of all of said property to satisfy its claim of \$2,230,000.00.

5.

That said deed of trust and mortgages set up in complainant's bill are void as to personal and mixed property:

First: As said mortgage and first supplemental mortgage was not accompanied by the affidavit of



good faith and valuable consideration required by Section 3408, Idaho Revised Codes.

Second: As said mortgage and first and second supplemental mortgages were not filed and indexed recorded as a chattel mortgage as required by Section 3409, Idaho Revised Codes.

Third: As said mortgages provided for the taking and using of the incomes, revenues, rents, issues and profits of the Great Shoshone and Twin Falls Water Power Company and to enjoy the income arising from property intended to be covered by said mortgages or deeds of trust by the mortgagor, contrary to law.

6.

That your petitioner should be allowed to intervene and plead to complainant's bill of complaint and set up his defenses and otherwise protect his rights. That your petitioner is informed and believes that unless he can have his claim settled out of the property which complainant claims is covered by its deed of trust and supplemental mortgages, that your petitioner's claim will be valueless.

*Wherefore*, Your petitioner prays that he be allowed to intervene herein and be made a party defendant.

JAKE M. SHANK.

By ALFRED A. FRASER,

His Attorney.

ALFRED A. FRASER, Solicitor.

(Duly verified.)

Endorsed: Filed Oct. 25, 1915.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

ORDER FOR INTERVENTION OF JAKE M.  
SHANK.

The request of said Jake M. Shank to intervene and be made a party defendant herein, having this day been made to the Court, and it appearing to the Court from the matters stated therein that said Jake M. Shank should be allowed to intervene and be made a party herein, and the Court being fully advised in the premises, *it is hereby ordered* that the said petition be granted and the said Jake M. Shank is hereby made a party defendant and is hereby permitted to plead herein and file his pleading in said cause on or before the . . . . . day of October, 1915.

Dated this 25th day of October, 1915.

FRANK S. DIETRICH, Judge.

Endorsed: Filed Oct. 25, 1915.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

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(Title of Court and Cause.)

ANSWER.

The intervening defendant, Jake M. Shank, now and at all times saving to himself all and all manner of benefit and advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in complainant's Bill of Complaint (hereinafter called "the Bill") and complainant's Supplemental Bill of Complaint (hereinafter called "the Supplemental Bill"), contained

for answer thereto, or to so much or such parts thereof as he is advised it is material or necessary for him to make answer to, and answering says:

## 1.

This defendant says:

(a) That leave to intervene in the above entitled case as a defendant and to file this answer in intervention has heretofore, before the filing hereof, been obtained from the above entitled Court.

This defendant says \* \* \* \* :

(The paragraphs here omitted are identical with the paragraphs in the joint answer of L. M. Plumer and F. B. Scull, executors of the estate of L. L. McClelland, deceased, set forth in this record, from paragraph one to paragraph nineteen inclusive and from paragraph twenty-three to the signatures of L. M. Plumer and F. B. Scull, excepting that where the terms defendants or correlative plurals are used the same appear in the singular in this answer.)

JAKE M. SHANK.

By ALFRED A. FRASER,

His Attorney.

## 20.

This defendant denies that the interests of Jake M. Shank, or of any other creditor are subject to interest of complainant herein, in so far as complainant claims a lien upon personal or mixed property by virtue of the said deed of trust and supplemental mortgages.

21.

And this defendant alleges that heretofore and prior to the commencement of this action by the Equitable Trust Company of New York, as trustees, against the Great Shoshone and Twin Falls Water Power Company, and long prior to the appointment of a Receiver herein, there had been pending in this Court an action brought by the said Jake M. Shank as plaintiff against the said Great Shoshone and Twin Falls Water Power Company, to recover the sum of Fifteen Thousand Dollars for personal injuries alleged to have been received by the said Jake M. Shank by and through the negligence and carelessness of the said Great Shoshone and Twin Falls Water Power Company, and that said action was compromised, and under the terms of said compromise the said Great Shoshone and Twin Falls Water Power Company agreed to pay to the said Jake M. Shank the sum of Eight Thousand Dollars in certain payments to be made from month to month, and that said Great Shoshone and Twin Falls Water Power Company has made to said Jake M. Shank payments under said agreement of compromise and there yet remains due and unpaid under said agreement to the said Jake M. Shank the sum of Four Thousand, Three Hundred Ninety Dollars, and that no part of this last mentioned sum has been paid. That said Jake M. Shank has filed his claim with the Receiver for said amount and said claim has been duly allowed and approved by the honorable judge of this Court to be a valid and liquidated claim against said Great Shoshone and Twin Falls Water Power Company in the

said sum of Four Thousand Three Hundred Ninety Dollars.

## 22.

This defendant alleges that at the time of the approval of said claim, and for some time prior thereto, since the 2nd day of November, 1914, all of the property of the said Great Shoshone and Twin Falls Water Power Company had been and now is, in the control and under the supervision of this Court, acting through said Receiver, William T. Wallace, and that this defendant has not now and has not had an opportunity to bring a suit upon this debt of the Great Shoshone and Twin Falls Water Power Company and obtain a lien by having a writ of attachment or other writ or process issued out of this or any other Court.

## 23.

This defendant alleges that said deed of trust as set forth in the Bill marked Exhibit "A", purports to cover and subject to its lien, real, personal and mixed property, but that neither the complainant nor its predecessors in interest, nor the Great Shoshone and Twin Falls Water Power Company, the mortgagor therein, or any one for them, ever caused said mortgage or deed of trust to be accompanied by the affidavit of the mortgagor; that said mortgage or deed of trust is or was made in good faith and without design to hinder, delay or defraud creditors; and that this defendant alleges that said mortgage or deed of trust is not, and has not been filed for record with the County Recorder of the counties where the personal and mixed property described therein was and is kept; and that the Recorder in said counties did



not and has not since indorsed on the back the time of receiving it, and did not and has not filed the same in his office, to be kept there for the inspection of all persons interested, and that said deed of trust was not entered in a book showing a minute of all mortgages of personal property as in such mortgages of personal and mixed property the statute, Sections 3408 and 3409, Idaho Revised Codes, provides.

(The paragraphs here omitted are identical with the paragraphs in the joint answer of L. M. Plumer and F. B. Scull, executors of the estate of L. L. McClelland, deceased, set forth in this record, from paragraph one to paragraph nineteen inclusive and from paragraph twenty-three to the signatures of L. M. Plumer and F. B. Scull, excepting that where the terms defendants or correlative plurals are used the same appear in the singular in this answer.)

JAKE M. SHANK.

By ALFRED A. FRASER,  
His Attorney.

ALFRED A. FRASER, Solicitor.

(Duly verified.)

Endorsed: Filed Oct. 25, 1915.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

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(Title of Court and Cause.)

In Equity—No. 526.

MOTION.

*Now comes* the complainant and moves the Court as follows:

(a) To vacate and set aside the order made herein on the 25th day of October, 1915, allowing Jake

M. Shank to intervene and be made a party defendant in this cause, which said order was made *ex parte* and without notice of application therefor to complainant, for the reason that the petition for such order, filed by said intervener, is insufficient in law and in equity, and does not set forth facts sufficient to entitle said Jake M. Shank to intervene or be made a party defendant in said cause.

(b) To dismiss the petition of said Jake M. Shank to intervene and be made a party defendant herein, for the reason that the said petition is wholly insufficient in law and equity, and does not set forth facts sufficient to entitle said petitioner to intervene or be made a party defendant in said cause.

(c) To strike out what is denominated an answer, filed by or on behalf of the said Jake M. Shank, for the reason that it appears therefrom that said intervener has not such interest in this litigation as will entitle him to intervene or be made a party defendant in said cause, and the matters set forth in said alleged answer do not constitute a proper defense to complainant's bill of foreclosure, and the allegations therein contained do not set forth matter sufficient to disentitle complainant to the relief sought in the Bill.

MURRAY, PRENTICE & HOWLAND,  
SULLIVAN & SULLIVAN,  
RICHARDS & HAGA,

Solicitors for Complainant.

Endorsed: Filed Oct. 26, 1915.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

STATEMENT OF EVIDENCE UNDER EQUITY  
RULE NO. 75.

Be it remembered that this cause came regularly on for trial before the Court, sitting in equity on the 25th day of October, 1915, on the Bill of Complaint and Supplemental Bill of Complaint of The Equitable Trust Company of New York, complainant herein, and the issues made thereon by the answers of Guy I. Towle, Carl J. Hahn, administrator of the estate of Harry M. King, deceased, defendants, and the answers of L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, and Jake M. Shank, interveners. Whereupon the following proceedings were had:

The Court overruled the motions of complainant, The Equitable Trust Company of New York, to strike out the answer of Guy I. Towle and to vacate the orders made by this Court on October 23rd and 25th, 1915, allowing L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, and Jake M. Shank, to intervene and be made parties defendant in this cause, and to dismiss the petitions and strike the answers of said interveners, L. M. Plumer and E. B. Scull, executors as aforesaid, and Jake M. Shank.

Thereupon the allegations in the answers of said defendants and interveners were by agreement of counsel in open Court deemed denied. The Court then directed William T. Wallace, as Receiver of the Great Shoshone and Twin Falls Water Power Company duly appointed in equity cause No. 509, pending

in this Court, to file his answer in this cause by 10 o'clock in the forenoon of October 26, 1915, and said Receiver within such time filed his answer as directed. The Clerk thereupon produced and opened in open Court the depositions of certain witnesses taken in New York before Harry Durning, notary public, pursuant to stipulation, and Mr. Haga proceeded to read the depositions, which were in substance as follows:

J. A. Allis, a witness sworn on behalf of the complainant whose deposition was taken as aforesaid on October 11, 1915, testified as follows:

Witness identified a document entitled, "Deed of Trust, Great Shoshone and Twin Falls Water Power Company to The Trust Company of America and James D. O'Neil, Trustees, dated May 1, 1910, \$10,000,000," which was marked "Complainant's Exhibit 1 for identification, October 11, 1915, testimony of Mr. J. A. Allis". Said Deed of Trust is signed by R. L. Kester, the vice-president of the Great Shoshone and Twin Falls Water Power Company, and William H. Leupp, the vice-president of The Trust Company of America, and James D. O'Neil, whose signatures appear thereon, and was duly sealed and acknowledged.

(The Deed of Trust referred to was over objection admitted in evidence and is identical with the copy thereof marked "Exhibit A" to the Bill of Complaint on file herein, excepting that said copy does not show recordation certificates and that the figures \$25.00 in the form of registered bond set out therein should be \$25,000.00.)

William K. Dunbar, a witness sworn on behalf of



complainant, whose deposition was taken as aforesaid on October 11, 1915, testified as follows:

Witness identified a document entitled, "Deed of Trust, Great Shoshone and Twin Falls Water Power Company to The Trust Company of America and James D. O'Neil, dated June 21, 1911," which was marked "Complainant's Exhibit 2, the testimony of Mr. William K. Dunbar, October 11, 1915"; and a document which begins, "Supplemental Mortgage, This indenture made and entered into this 7th day of April, in the year of our Lord, one thousand nine hundred and thirteen, by and between the Great Shoshone and Twin Falls Water Power Company, etc.," which was marked "Complainant's Exhibit 3 to the testimony of William K. Dunbar, October 11, 1915". These instruments are signed by the vice-president and secretary of the Great Shoshone and Twin Falls Water Power Company, whose signatures appear thereon and were duly sealed and acknowledged.

(The Deed of Trust and Supplemental Mortgages referred to were admitted in evidence and are identical with the copies set out in Exhibits B and C, attached to the Bill of Complaint of the complainant herein.)

Albert E. Smith, a witness sworn on behalf of the complainant, whose deposition was taken as aforesaid, on October 13, 1915, testified in substance as follows:

Witness has been the treasurer of the National Securities Corporation since prior to July 1, 1914. The National Securities Corporation is the owner of all of the outstanding bonds issued by Great Shoshone



and Twin Falls Water Power Company secured by the said Deed of Trust dated May 1, 1910, and Supplemental Mortgages dated June 21, 1911, and April 7, 1913, in the aggregate principal amount of \$2,230,000. The National Securities Corporation purchased these bonds in June, 1915, before their maturity and for value, from a protective committee for holders of notes of Great Shoshone and Twin Falls Water Power Company under agreement for refinancing dated June 27, 1914, and modification thereof, dated October 29, 1914, which committee consisted of Alvin W. Krech, H. Hobart Porter, A. C. Robinson and A. M. Imbrie. The Great Shoshone and Twin Falls Water Power Company has no interest in these bonds, and the title acquired thereto by the National Securities Corporation was an absolute title of ownership. Upon delivery of the bonds to the National Securities Corporation, value was paid therefor to the vendors above named. The National Securities Corporation is the present owner of the bonds which are now held by the Guaranty Trust Company as security for ten-year, six per cent gold notes of the National Securities Corporation under the terms of an agreement dated July 1, 1914, the original of which agreement is in the possession of the Guaranty Trust Company of New York. A true and correct copy of said agreement was identified and admitted in evidence marked "Exhibit E" to the testimony of Albert E. Smith, October 13, 1913. Article 4 of said agreement reads as follows:

"Upon any default in the payment of interest on or principal of any bonds, notes or other secu-

rities at any time comprised within the collateral or held as security for any of the collateral or upon any default under any mortgage or other instrument securing the same, or any part thereof, the Trustee shall have and may exercise all the rights of a holder of such bonds, notes or other securities for the enforcement thereof or of the security therefor."

*Mr. Fraser:* "If the court please, during the past few days I wasn't interested much and matters have come to my attention that I am not able to produce proof concerning, at the present time, but in hearing that deposition read, the parties stated that these bonds were first put up as collateral security to some notes, I believe, of the Great Shoshone Company, then that the National Securities Company purchased these bonds, but they nowhere say what they paid for them. I understand they got them for about twenty-five cents for each hundred dollar bond; that is by hearsay."

*Mr. Haga:* "Twenty-five dollars."

*Mr. Fraser:* "Was it twenty-five dollars? Well, a very small amount for the value of this bond, and the party who gives the deposition avoids stating in the deposition that they received anything of value for them, and the relationship existing between these parties who bought it in and the original holders is another matter, that if I had been as alert at the start of this suit as I have been for the last few days, I might have investigated a little more thoroughly."

Charles A. Platner, a witness sworn on behalf of

the complainant, whose deposition was taken as aforesaid on October 13, 1915, testified as follows:

Witness, bank clerk of Guaranty Trust Company of New York, having charge of documents held by Guaranty Trust Company of New York as trustee, produced certain bonds of the Great Shoshone and Twin Falls Water Power Company, being first mortgage, five per cent gold bonds secured by said Deed of Trust, dated May 1, 1910, and Supplemental Mortgages, aforesaid, dated June 21, 1911, and April 7, 1913, of which the registered bonds numbered from 1 to 48, inclusive, and being of par value \$25,000 each were identified and marked "Exhibit F to the testimony of Charles H. Platner, October 13, 1915;" and coupon bonds numbered from 1 to 1030, inclusive, of the par value of \$1,000 each with coupons number seven, due November 1, 1913, and subsequent coupons attached were identified by the witness and marked "Exhibit G to the testimony of Charles H. Platner, October 13, 1915." The said coupon bonds are identical with the form of the bonds which appear on pages 25 to 30, inclusive, of the Bill of Complaint in this cause, excepting that the serial numbers and the signatures are omitted. The registered bonds produced by the witness are identical with the form that appears on pages 30 to 33, inclusive, in the Bill of Complaint in this action, with the exception that the serial numbers and signatures are omitted and that in the upper right hand corner of the form of bond as it appears on page 30 the figures \$25.00 should be \$25,000.00. The form of the coupon bonds, as aforesaid, was marked "Exhibit G-a"

and the form of registered bonds, as aforesaid, and a copy of the bill of complaint in this cause were marked "Exhibit F-a."

(The exhibit referred to as "Exhibit F-a" was admitted in evidence and is identical with the Bill of Complaint herein; and the exhibits referred to as "Exhibits F, G, and G-a," were admitted in evidence and are identical with the form of registered and coupon bonds set out in the complainant's Bill of Complaint herein, subject to the corrections as noted above by the witness.)

The registered bonds numbered 1 to 48, inclusive, and marked "Exhibit F to the testimony of Charles H. Platner, October 13, 1915," are signed by the vice-president and secretary of the Great Shoshone and Twin Falls Water Power Company whose signatures appear thereon and are duly sealed with the corporate seal. The 1030 coupon bonds numbered 1 to 1030, inclusive, marked "Exhibit G" for identification to the testimony of Charles H. Platner, are signed by the proper officers of the Great Shoshone and Twin Falls Water Power Company whose signatures appear thereon and all of said bonds are duly sealed with the seal of said company. The Deed of Trust dated May 1, 1910, and marked "Exhibit 1 for identification to the testimony of J. A. Allis, October 11, 1915," is signed by the secretary of the Great Shoshone and Twin Falls Water Power Company whose signature appears thereon. (While the deposition recites that this witness produced the bonds referred to, before the Notary, they were not at-



tached to the deposition, nor were any bonds exhibited or offered in evidence at the time of the trial.)

Samuel Armstrong, a witness sworn on behalf of the complaint, whose deposition was taken as aforesaid on October 13, 1915, testified as follows: Witness is assistant secretary of the plaintiff.

The Equitable Trust Company of New York became the sole trustee under said Deed of Trust dated May 1, 1910, and Supplemental Mortgages aforesaid dated June 21, 1911, and April 7, 1913, The Trust Company of America having merged into the Equitable Trust Company of New York, and James D. O'Neil having been removed pursuant to the provisions of Article 13 of said Deed of Trust dated May 1, 1910, and as alleged in the Bill of Complaint of complainant herein. H. Hobart Porter, being, at said time, president of the American Water Works and Electric Co. All the said registered bonds marked "Exhibit F to the testimony of Charles H. Platner, October 13, 1915," are duly certified by the proper officers of the Trust Company of America, whose signatures appear thereon, and the records of The Trust Company of America show that such certification was on its behalf. The said coupon bonds marked "Exhibit G to the testimony of Charles H. Platner, October 13, 1915," are duly certified by the proper officers of The Trust Company of America and The Equitable Trust Company of New York whose signatures appear thereon, and the records of The Trust Company of America and The Equitable Trust Company of New York show such certification. The Deed



of Trust dated May 1, 1910, marked "Exhibit 1 to the testimony of J. A. Allis, October 11, 1915," is signed by the vice-president and assistant secretary of The Trust Company of America whose signatures appear thereon and duly sealed with the seal of said Company.

The witness thereupon read the certificates of recordation that appear on said Deed of Trust which show that it was recorded with the county recorder in the counties and in the manner as alleged in the Bill of Complaint of the complainant on file herein, but was nowhere filed or recorded as a chattel mortgage.

Exhibit A to the Bill of Complaint in this action is a true copy of the Deed of Trust dated May 1, 1910, with the exception that on page 30 the figures at the top of the form of bond should be \$25,000.00 instead of \$25.00, and with the further exception that the certificates of recordation do not appear on said copy, which was thereupon marked "Exhibit 1-a."

The witness then read the certificate of recordation that appeared on the Supplemental Mortgage dated June 21, 1911, marked for identification "Exhibit 2 to the testimony of William K. Dunbar, October 11, 1915," which showed that said mortgage was recorded in the county and in the manner as alleged in said Bill of Complaint, but was nowhere filed or recorded as a chattel mortgage. Exhibit B to the bill of complaint in this cause is a true and correct copy of said Supplemental Mortgage, with the exception that the recordation certificate does not

appear on said copy, which was thereupon marked "Exhibit 2-a." The witness then read the certificates of recordation that appear on the Supplemental Mortgage dated April 7, 1913, marked "Exhibit 3 to the testimony of William K. Dunbar, October 11, 1915," which showed that said Supplemental Mortgage was recorded with the county recorder of the counties and in the manner as alleged in the Bill of Complaint on file herein, but was nowhere filed or recorded as a chattel mortgage. Exhibit C to said Bill of Complaint is a true and correct copy of said Supplemental Mortgage with the exception that the recordation certificates do not appear on said copy, which was thereupon marked "Exhibit 3-a." Default has been made in the payment of the interest on said registered and coupon bonds as alleged in said Bill of Complaint and Supplemental Bill of Complaint and The Equitable Trust Company of New York has been requested to declare the principal of said bonds due and foreclose on said Deed of Trust dated May 1, 1910, and Supplemental Mortgages aforesaid, dated June 21, 1911, and April 7, 1913, as alleged in said Bill of Complaint herein, by instruments in writing from the Commonwealth Trust Company and American Water Works and Electric Company signed by H. Hobart Porter, president, and others, and from The Guaranty Trust Company of New York and National Securities Corporation.

Witness identified an instrument directed to Great Shoshone and Twin Falls Water Power Company and

William T. Wallace, as receiver of said company, which was marked "Exhibit K for identification to the testimony of Samuel Armstrong, October 13, 1915." This instrument was duly signed by the vice-president and assistant secretary of The Equitable Trust Company of New York whose signatures appear thereon and the copy thereof annexed to the Supplemental Bill of Complaint and marked "Exhibit A" is a true and correct copy and the same was marked "Exhibit K-a."

(The exhibits referred to as "Exhibits 1a, 2a and 3a" were admitted in evidence and are identical with the copies thereof marked "Exhibits A, B and C" to complainant's Bill of Complaint herein; and the exhibit referred to as "Exhibit K-a" was admitted in evidence and is identical with the copy thereof marked "Exhibit A" to complainant's Supplemental Bill of Complaint on file herein.)

Thereupon all exhibits attached to said depositions not theretofore introduced or admitted were offered and admitted in evidence.

William T. Wallace, a witness called on behalf of the complainant, testified as follows:

Witness has been receiver since November 2, 1914, and prior thereto since May 14th, 1914, was General Manager of the Great Shoshone and Twin Falls Water Power Company. All the property listed in the Amendments to the Bill of Complaint, on file herein, is in the ownership of Great Shoshone and Twin Falls Water Power Company, excepting a small parcel the

title to which is vested in the Shoshone Falls Power Company, the stock and bonds of which are held by Great Shoshone and Twin Falls Water Power Company. Besides the property described in what is termed Amendments to Bill of Complaint of this complainant, lodged with the Clerk of this Court Oct. 19, 1915, there is the stock and bonds of the Shoshone Falls Power Company, Limited, which may or may not have any value, and in addition the stock of the Jerome Water Works Company, Limited, a public ferry at Shoshone Falls and a miscellaneous assortment of materials and supplies of all kinds. This property is all located in the Snake River Valley in the State of Idaho. There has been about \$7,500 expended by the receiver in extensions. The company also owns one team of horses, a team of mules, wagons, three motorcycles, two automobiles and there are cross-arms and insulators stored at various points throughout the territory. Witness identified the minute book of the Great Shoshone and Twin Falls Water Power Company, and page 5 thereof, showing minutes of a special meeting of the Board of Directors of the Great Shoshone and Twin Falls Water Power Company, held at the office of the company at Pittsburgh, on July 1, 1910, was marked "Complainant's Exhibit 1", admitted in evidence, and by agreement of counsel the reporter made a copy thereof to be filed as the exhibit, which is in words and figures as follows:

"Mr. Van Wagener then presented the following resolution and moved its adoption:



“ *Whereas*, it is necessary for this Company to borrow money for the purpose of purchasing, constructing and extending, completing and equipping its power development and power distribution system in the State of Idaho and for the general uses of this Company in the future development of its business.

“ *Now, therefore, be it resolved*, that this Company issue and deliver its First Mortgage Five Per Cent Gold Bonds to an amount not exceeding the principal sum of Ten Million Dollars, such bonds to be of the denomination of One Thousand Dollars and Five Hundred Dollars, respectively, (provided that temporary printed bonds may be issued of the denomination of \$25,000 each) to be dated May 1st, 1910, and to be payable on the first day of May, A. D. 1950, in gold coin of the United States of America of the present standard of weight and fineness, to bear interest at the rate of five per cent. per annum from the first day of May, 1910, until said principal sum is paid, payable semi-annually on the first days of May and November in each year upon the presentation and surrender of the interest coupons thereto attached as they respectively mature, and to be subject to call and redemption on any interest payment date at par plus a premium of five per cent. of the par value and accrued interest.

“ Both principal and interest of said bonds to be paid without deduction for any United States, State, County, Municipal or other tax or taxes



which this Company may be required to pay or retain therefrom under or by reason of any present or future law, such tax or taxes to be paid by this Company, such bonds to be authenticated by a certificate endorsed thereon by The Trust Company of America, Trustee, of the Mortgage or Deed of Trust securing the same, and,

“*Be it further resolved*, that for the purpose of securing the payment of the principal and interest of said bonds this Company make, execute, acknowledge and deliver to The Trust Company of America of the City of New York and James D. O’Neil, of the City of Pittsburgh, Pennsylvania, a Mortgage or Deed of Trust conveying and transferring all and singular the property and other assets of this Company now owned and hereafter to be acquired upon the trusts, terms and conditions, and for the purposes therein provided, and that the President or Vice-President and Secretary or Assistant Secretary of this Company on its behalf make and execute all such bonds and make, execute, acknowledge and deliver such Mortgage or Deed of Trust, and

“*Be it further resolved*, that the form of Mortgage or Deed of Trust as presented to this meeting, with the covenants and provisions therein expressed and the form of bond therein set forth, be approved and adopted by this meeting, and that the Secretary of this Company be appointed the attorney for this Company in its name and as and for its corporate act and deed, to acknowledge

said Mortgage or Deed of Trust before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment to the intent that the same may be duly recorded.'

"This resolution being duly seconded, it was unanimously adopted.

"Thereupon, on motion duly made and seconded, it was unanimously

"*Resolved*, that the President of this Company be and hereby is authorized and directed to call a special meeting of the stockholders of this Company as soon as legally possible to take such action, upon the approval or disapproval of the foregoing resolution, and that the Secretary of this Company be authorized and directed to give the proper notice of said meeting as required by law and by the By-Laws of this Company unless the same shall be duly waived by the stockholders of this Company, and that no further action be taken in pursuance of the foregoing resolution unless and until the same shall have been duly approved by the stockholders of this Company."

The books of account of the Company show that no interest has been paid on the bonds since May 1, 1914. Pages 8 to 11, inclusive, of said Minute Book purport to be the minutes of a special meeting of the stockholders of the Great Shoshone and Twin Falls Water Power Company held at the office of the Company in Pittsburgh on July 1, 1910. A portion of these minutes was then marked "Complainant's Ex-

hibit 2", and by agreement of counsel the reporter made a copy thereof, to be filed as the exhibit, which was admitted in evidence and is in words and figures as follows:

"The Secretary thereupon read to the stockholders the Resolution adopted by the Directors of this Company at the meeting held the 1st day of July, 1910, authorizing the issue of the First Mortgage Five Per Cent. Gold Bonds of this Company to an amount not exceeding Ten Million Dollars, and the execution of a Mortgage or Deed of Trust to The Trust Company of America and James D. O'Neil for the purpose of securing the principal and interest of all of said bonds.

"Mr. Van Wagener thereupon presented the following Resolution and moved its adoption:

"*Resolved*—First: That the Stockholders of this Company in accordance with the direction of the Board of Directors hereby consent to and authorize the issue of the First Mortgage Five Per Cent. Gold Bonds of this Company to an amount not exceeding the principal sum of Ten Million Dollars, said bonds to be of the denomination and to be payable and to be secured in the manner set forth in the Resolution of the Board of Directors of this Company.

"2nd: That the proper officers of this Company be and hereby are authorized for and on behalf of this Company to execute and deliver to The Trust Company of America of the City of New York and James D. O'Neil of the City of

Pittsburgh, Pa., a Mortgage or Deed of Trust substantially of the form of the draught of said Indenture submitted to this meeting.

“3rd: That the proper officers of this Company be, and they are hereby authorized to execute, issue and deliver for and on behalf of this Company, the First Mortgage Five Per Cent. Gold Bonds of this Company to an amount not exceeding in the aggregate the principal sum of Ten Million Dollars under and in pursuance of a draught of the Mortgage or Deed of Trust submitted to this meeting, said bonds to be substantially of the tenor and effect set forth in said Indenture and to be issued in the manner and on the terms therein provided and to be equally and ratably secured thereby. The coupons attached thereto to bear the engraved facsimile signature of the Treasurer of this Company as in said Indenture provided.

“4th: That the proper officers of this Company be and hereby are authorized from time to time as required by the provisions and terms of said Indenture to mortgage or pledge all or any of the real or personal property that shall hereafter be acquired by this Company as security for the payment of the principal and interest of the bonds to be issued under and in pursuance of such Indenture.’

“This Resolution being duly seconded, it was unanimously adopted, and the Secretary was instructed to cast a ballot in its favor.”



Mr. Wallace on cross-examination by Mr. Hays testified as follows:

The books of account of the Company show that \$2,225,000 of Five Per Cent Bonds secured by the mortgage of May 1, 1910, were deposited with the Commonwealth Trust Company of Pittsburgh as collateral to an authorized issue of Six Per Cent. Notes of which notes \$1,713,500 only were sold or issued. The other \$5,000.00 of bonds, so far as the books show, are in the hands of the public.

On cross-examination by Mr. Martin Mr. Wallace testified as follows:

When witness became Receiver there was cash on hand \$7,590. Not over \$200 to \$300 of poles and other electrical equipment have been sold for cash. There is on hand not in excess of from \$1,500 to \$2,000 of electrical equipment, such as electrical ranges and articles sold usually to the general public consuming electricity. The Receivership has paid expenses and has enough cash on hand with which to pay taxes.

Mr. Wallace, on re-direct examination by Mr. Haga, testified as follows:

The books of the Company show that \$2,230,000 of the bonds were actually issued by Great Shoshone and Twin Falls Water Power Company. The books of the company also show an authorized issue of \$1,780,000 of notes mentioned above; all of these which were issued are outstanding, and that neither the principal nor the interest thereof has been paid, and the books of the Company do not show who owns these notes.



Mr. Haga: I wish to file at this time, if the Court please, the amendment which was served upon counsel some time ago, and which contains a description of the property testified to by the witness. The only purpose of the amendment is to particularly describe the property owned by the Company, and as is described generally in the original bill. Copies of the amendment were served some time ago or lodged with the clerk of this Court. It may be understood that the answer to the original bill may stand as answer to the amendment.

The Court: Very well.

Thereupon a copy of the Bill of Complaint filed by Guy I. Towle in this Court against the defendant, Great Shoshone and Twin Falls Water Power Company in equity cause No. 509 pending in this Court was marked "Plaintiff's Exhibit No. 3", admitted in evidence and the material parts thereof are in words and figures as follows:

*In the District Court of the United States, for the  
District of Idaho, Southern Division.*

GUY I. TOWLE, Complainant,

vs.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a corporation,  
Defendant.

In Equity—No. 509.

BILL OF COMPLAINT.

"The Complainant, Guy I. Towle, a citizen and resident of the State of Idaho, brings this bill on his own

behalf and on behalf of all creditors of the Great Shoshone and Twin Falls Water Power Company, who may hereafter join in the prosecution of this suit against the Great Shoshone and Twin Falls Water Power Company, a corporation, organized and existing under the laws of the State of Delaware, and a citizen of said State, and thereupon the Complainant complains and alleges as follows:

After the formal allegations, it is alleged as follows:

I.

That the Complainant is a resident and citizen of the State of Idaho, and of the District of Idaho, Southern Division, and resides in Lincoln County in said State.

II.

That the defendant is now, and at all the times hereinafter mentioned, was a corporation organized and existing under the laws of the State of Delaware, of which State it is a citizen, and having its statutory office at Wilmington, in said State, but has all of its property and carries on all of its business in the State of Idaho, where it is duly licensed to carry on such business, having its principal office and place of business in Twin Falls County, Idaho, and that all of its property and principal office in said State of Idaho are situated in the Southern Division of the District of Idaho.

III.

That the defendant, Great Shoshone and Twin Falls Water Power Company, was organized under

the laws of the State of Delaware on or about the 26th day of January, 1907, for the purposes, among others, of acquiring water powers, water rights and appropriations and other property and of acquiring and operating power stations and heating and lighting stations and their accessories and of dealing in water power, electrical power and electrical energy and apparatus, machinery and other property used or useful in connection therewith.

#### IV.

The Complainant is informed and believes and therefore alleges that the defendant has an authorized capital stock of One Million (\$1,500,000.00) Five Hundred Thousand Dollars, divided into fifteen (15,000) thousand shares of the par value of one hundred (\$100.00) Dollars each, all of which has been issued and is now outstanding.

#### V.

The Complainant is informed and believes and therefore alleges that on or about the 7th day of May, 1907, the defendant filed in the office of the Secretary of State of Idaho a duly authenticated copy of the Certificate of Incorporation and an acceptance of the Constitution and Laws of the State of Idaho, and a designation of an agent in said State; that thereafter, the defendant proceeded to acquire lands and water powers in said State of Idaho, and to conduct its business in said State; that the defendant is now the owner of various parcels of real estate located at and near Shoshone Falls, in the County of Lincoln, and others at and near Lower Salmon Falls in the

Counties of Gooding and Twin Falls, upon which are located power plants. It also owns water appropriations upon the Snake River at or near these points, and as well, an extensive distributing system whereby it supplies electric light, heat and power for domestic, commercial, irrigation and municipal purposes throughout that part of Southern Idaho east of and including Mountain Home and Grand View to Milner and Oakley.

## VI.

That heretofore and on or about the 26th day of May, 1913, for moneys advanced to it, defendant made, executed and delivered to American Water Works and Guarantee Company, a corporation organized under the laws of the State of New Jersey, its demand promissory note dated on the said day, for the sum of Twelve Thousand (\$12,857.29) Eight Hundred Fifty-seven Dollars and Twenty-nine Cents, of which note Complainant thereafter became and now is the owner and holder, and that no owner or holder of said note ever was or is a citizen or resident of the State of Delaware; that payment of said note has been duly demanded and there is now due and owing thereon to Complainant the sum of Twelve Thousand (\$12,857.29) Eight Hundred Fifty-seven Dollars and Twenty-nine Cents, with interest at the rate of Six (6%) Per Cent. per annum from May 26th, 1913.

## VII.

That the Complainant is advised and believes and therefore alleges that the property of the defendant



consists of certain bills and accounts receivable, amounting in the aggregate to not exceeding One Hundred (\$140,000.00) and Forty Thousand Dollars, whereof, however, a large part is of doubtful collectibility; cash on hand or in bank not exceeding Five Thousand (\$5,000.00) Dollars; and real estate, lands, power stations, water appropriations, distributing system and equipment of large actual and potential value; that Complainant is informed and believes and therefore alleges that the value of the property of defendant, if properly conserved and continuously operated, is greatly in excess of the amount of its liabilities; that said properties are at the present time profitably operated and produce a considerable income in excess of the cost of operation, and that the continued operation of its property is essential to the preservation of its value and in the public interest, and will result in an enhancement of the value of its assets.

### VIII.

The Complainant is further informed and believes and therefore alleges that the defendant has made heavy expenditures for the increase of its plant and equipment and has become heavily indebted therefor; that it is also indebted for supplies furnished in connection with its operation; that on account of the present conditions existing throughout the financial centers of the United States, due to the war now raging in Europe and other causes, the defendant has been and is now unable to obtain further credit or borrow further funds; that payment of moneys ow-



ing to the defendant has been delayed by the persons owing the same, and that more than Ninety Thousand (\$90,000.00) Dollars, due from companies to whom power has been furnished for pumping water for irrigation, are not collectible at the present time; that under these circumstances and because thereof, and for other reasons, a situation has resulted where the defendant, notwithstanding the great value of its properties, is and will be unable to meet its obligations and the interest thereon as they mature and become payable.

#### IX.

The exact amount of the indebtedness of the defendant is unknown to Complainant, but the Complainant is informed and believes and therefore alleges that the amount of said indebtedness is substantially as follows:

\$2,340,000.00 of First Mortgage Five Per Cent. Gold Bonds issued under and secured by a mortgage dated May 1, 1910, to the Trust Company of America, and James D. O'Neil as Trustee, which said bonds are dated May 1, 1910, and are payable May 1, 1950. Of said First Mortgage Bonds, \$115,000.00 are outstanding in the hands of third parties, and the remainder, viz., \$2,225,000.00 in principal amount, are pledged as collateral to issues of the Company's Six Per Cent. Coupon Notes which have been issued and are outstanding to the amount of \$1,780,000.00. Said notes are of two issues, each secured by the deposit of First Mortgage Bonds of the Company under a collateral trust indenture to the Commonwealth

Trust Company of Pittsburgh, as Trustee. Of said outstanding Six Per Cent. Coupon Notes, \$155,000.-00 in principal amount became due and payable August 1, 1914, and are overdue and unpaid, and \$16,000.00 in principal amount became due November 1, 1914, and are overdue and unpaid, and an installment of interest upon certain of said notes, aggregating in principal amount \$48,750.00, fell due November 1, 1914, and still remains unpaid; and the defendant has refused payment of said notes and interest and is in default in the payment thereof.

Complainant is informed and believes and therefore alleges that the defendant is further indebted upon notes and accounts payable to an amount in excess of \$1,300,000.00, including the note held by Complainant, the greater portion of which is past due.

### X.

The complainant is further informed and believes, and therefore alleges that many creditors of the defendant are pressing defendant for payment of their claims, and there is great danger that the said creditors will bring suits upon the same to attach the property of the defendant and levy execution and in various ways enforce their respective claims; that unless this Court, in view of the financial embarrassment of the defendant as aforesaid, will deal with the property as a single trust fund and take it into judicial custody for the protection of every interest therein, there is great danger that the properties of the defendant may no longer be operated as a con-

tinuous system and enterprise; that action on the part of the creditors will result in judgments, executions and seizures by sheriffs or other like officers, and forced sales of the property of the defendant and interruption of the business of the defendant; that individual creditors will assert their remedies in different Courts; that conflicts between creditors and between Courts will be promoted; that a vast and unnecessary multiplicity of suits will result and that a great and irreparable injury and loss will be caused to the defendant and to its creditors; that should any of the creditors of the defendant succeed in the enforcement of their claims and thereby compel the defendant to suspend its business and become inactive, irreparable injury, damage and loss will be caused, not only to all the creditors of the defendant but to the public and to the communities and municipalities and the residents thereof to which defendant is now engaged in the supply of electric current for lighting, heating and power purposes; that the defendant and its properties may be placed in a position where it will be impossible to continue its development and comply with the orders of the Public Utilities Commission of the State of Idaho; that waste and loss can be avoided and property preserved for the service of the public and for the equitable benefit of all of those interested therein, only by the intervention of a court of equity and the granting of equitable relief, including the appointment of a Receiver.

XI.

That under these circumstances, the intervention of a court of equity is imperatively required for the protection of the rights of the complainant and of all other parties in interest, especially for the timely appointment of a receiver to take charge of and preserve the property of the defendant, continue the operation of its undertaking, and collect and receive and properly appropriate the income thereof until the final decree of the Court in the premises.

XII.

That this is a civil suit in the nature of a claim in equity and the matter in dispute exceeds, exclusive of interest and costs, the sum of Five Thousand (\$5,000) Dollars.

XIII.

Inasmuch as the Complainant has no adequate remedy at law for his aforesaid grievance and can have relief only in equity, the complainant files this bill of complaint on behalf of himself and all other creditors of the defendant who may come in and contribute to the expenses of the suit and prays for equitable relief as follows:

(1) That the rights of the Complainant and of all other creditors of the defendant may be ascertained and decreed, and that the Court fully administer the property and funds in which the complainant is interested, and for such purpose marshal all the assets of the defendant and ascertain the several and respective liens and priorities existing thereon,

and enforce and decree the rights, liens and equities of the creditors of the defendant as the same may be finally ascertained by the Court.

(2) That the Court forthwith appoint a receiver of all and singular the property and assets operated, held, owned or controlled by the defendant, including its land, and all equipment, materials, machinery, supplies, book accounts, choses in action, and assets of every description, wheresoever situated, belonging to the defendant, with full power and authority to take the same into his possession, and to hold, manage and operate the same, and to conduct the business now being conducted by the defendant; to collect and receive all the earnings, rents, issues, profits and income thereof, and to apply the said receipts under order of decree of the Court for such period as the Court shall order; with all the incidental powers ordinarily vested in receivers in like cases and with such additional powers as the Court may from time to time grant, and to incur such expenses as may be necessary or advisable for labor, supplies and materials, or otherwise, in connection with the administration of the assets and property of the defendant.

(3) That all creditors and stockholders and other persons be enjoined from instituting or prosecuting or continuing the prosecution of any actions, suits or proceedings at law or in equity or under any statute against the defendant in any Court, wheresoever situated, and from levying any attachments, executions or other processes upon or against



any of the properties of the defendant, or from taking or attempting to take into their possession the property or any part of the property of the defendant, and that the defendant, and its officers, directors, agents and employees, and all other persons, be enjoined and restrained from interfering with or hindering the taking into possession of the defendant's property by the said receiver and from transferring, selling, or disposing of any of the property or income of the defendant, or attempting to sell or dispose of the same in any manner.

(4) That at such times as may be found just and proper the properties of the defendant may be ordered to be sold as an entirety or in such parcels and at such places and in such manner and upon such terms and conditions as this Court shall deem just and equitable, and the proceeds of any such sale be distributed among those entitled thereto, or that the properties of the defendant, after satisfaction of the claims of creditors, may be returned to it, or that such other action may be taken in respect thereto as to the Court may seem proper, and as may be necessary to fully protect and enforce the rights and equities of the Complainant and of all other creditors of the defendant and other parties in interest.

(5) That this Court will grant unto the Complainant a writ of subpoena directed to the defendant, requiring the defendant to appear before this Court on a certain day therein named, and then and there to answer all and singular the matters therein set forth (but not under oath, an answer under oath

being hereby expressly waived) and further to perform and abide by such further order, direction or decree as shall be made herein, and as to the Court shall seem meet.

(5) That the Complainant have such other and further relief as to the Court may seem just and equitable.

And the Complainant will ever pray, etc.

(Signed) N. M. RUICK,  
Solicitor for Complainant.

Thereupon a copy of the order made by this Court in said equity cause No. 509 appointing Mr. William T. Wallace, Receiver, was marked "Plaintiff's Exhibit No. 4", admitted in evidence, and is in words and figures as follows:

*In the District Court of the United States, for the  
District of Idaho, Southern Division.*

GUY I. TOWLE, Complainant,

vs.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, Defendant.

In Equity—No. 509.

This cause came on to be heard and, after hearing counsel and the defendant consenting thereto, and it appearing that it is necessary for the protection and preservation of the respective rights and equities of the complainant and all other creditors of the defendant that the property and business of the defendant be preserved, operated and administered in this suit through a receiver to be appointed by this Court,

and that it is necessary that a receiver of the defendant and its property should be appointed forthwith and with powers herein granted; it is, after consideration, hereby

*Ordered, adjudged and decreed* that William T. Wallace, of Twin Falls, in the State of Idaho, be and he hereby is appointed receiver of this Court of the defendant Great Shoshone and Twin Falls Water Power Company and of all and singular the property, lands, plants, system, franchises, rights, claims, interests and assets of the said defendant of every name and nature and wheresoever situated, and he is hereby authorized forthwith to take possession thereof and to preserve, manage, operate and use the same and to conduct and carry on the operation of the hydro-electric power system and other business and properties of the defendant in such manner and to such extent as in his judgment is necessary and desirable and to exercise all authority, franchises and privileges of the defendant. The said receiver is authorized and directed to collect all moneys and other properties due and to become due to said Great Shoshone and Twin Falls Water Power Company; to institute and prosecute such suits in his own name as receiver or in the name of the Company or otherwise as he may be advised or as may be now pending in behalf of the Company, and to defend such suits as may be brought against him and those now pending or hereafter brought against the defendant which affect or may affect the property, rights and franchises of which he is or may become receiver.

Said receiver is also authorized and is hereby given full power and authority in his discretion to appoint and employ such agents, attorneys, officers, managers and employees as shall be necessary to aid him in the proper discharge of his duties; and it is

*Further ordered, adjudged and decreed* that the defendant and all persons, firms and corporations in possession of any of the property of the defendant forthwith deliver the same to the receiver; and the said defendant and the officers, directors, agents, attorneys and employees thereof and all other persons, firms and corporations whatsoever are hereby restrained and enjoined from interfering with, attaching, levying upon, seizing or in any manner whatsoever distributing any portion of the properties, rights and franchises of the defendant, or taking possession thereof or in any manner interfering with the same or any part thereof without the consent of the receiver, and from interfering in any manner with or preventing the discharge by said receiver of his duties or his operation and management of said properties and premises under the order of this Court; and it is

*Further ordered, adjudged and decreed* that the said receiver shall retain possession and continue to discharge the duties and trusts aforesaid until further order of this Court in the premises and that he shall from time to time apply to this Court for such other and further order and direction as he may deem necessary and requisite to the due administration of said trust; and it is

*Further ordered, adjudged and decreed* that within five days from the date of this order the said receiver shall execute and file with the Clerk of this Court a bond with one or more sureties, approved by this Court in the penal sum of Twenty-five Thousand Dollars (\$25,000), conditioned upon the faithful discharge of his duties, and to account for all funds coming into his hands and to abide by and perform all things which he shall be directed by the Court to do.

Dated November 2, 1914.

FRANK S. DIETRICH,  
District Judge.

Thereupon the answer filed by Great Shoshone and Twin Falls Water Power Company in said equity cause No. 509 was marked "Plaintiff's Exhibit No. 5", admitted in evidence, and is in words and figures as follows:

*In the District Court of the United States, for the  
District of Idaho, Southern Division.*

GUY I. TOWLE, Complainant,

vs.

GREAT SHOSHONE AND TWIN FALLS WA-  
TER POWER COMPANY, Defendant.

ANSWER.

Great Shoshone and Twin Falls Water Power Company, the defendant in this cause, for Answer to Bill of Complaint herein, or unto so much and such parts thereof as the defendant is advised that it is necessary or material for this defendant to make answer unto, answering says:



First: Defendant admits each and every allegation of the said Bill of Complaint as therein set forth or specified.

Second: The defendant joins in the prayer of the said Bill of Complaint.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY.

By (Signed) IRVING E. JOSLYN, Vice-President.  
P. B. CARTER,

Solicitor for Defendant.

Residence: Boise, Idaho.

Before the complainant rested and closed its case, and upon the coming in of the Court on the morning of October 27, 1915, Mr. P. B. Carter stated to the Court that he had been out of town for a few days and had just returned that morning; that a telegram had come to his office at 3:50 P. M., October 26, 1915, from H. Hobart Porter, President of the Great Shoshone and Twin Falls Water Power Company, requesting him to file an answer in this case on behalf of the Great Shoshone and Twin Falls Water Power Company, admitting all the allegations of the foreclosure bill and the supplemental bill Mr. Carter further stated to the Court that he had prepared an answer in pursuance of the telegram from Mr. Porter, and desired leave to file the same; that thereupon the Court took the application under advisement and suggested that the proposed answer be lodged with the clerk; said answer is as follows:

“Comes now the defendant, the Great Shoshone and Twin Falls Water Power Company, one of the de-

defendants in the above entitled action, and answering the bill of complaint and the supplemental bill of complaint admits each and every allegation of said bill of complaint and the supplemental bill of complaint as therein set forth or specified.”

Thereafter, to-wit, on the 3rd day of March, 1915, an order was entered denying said application.

On behalf of the defendant, Carl J. Hahn, Mr. Wise offered in evidence a certified copy of the judgment in the case of Carl J. Hahn, administrator of the estate of Harry M. King, deceased, vs. Great Shoshone and Twin Falls Water Power Company, to the introduction of which Mr. Haga objected on behalf of The Equitable Trust Company of New York, on the ground that it was irrelevant and immaterial, which objection was by the Court overruled *pro forma*, and said paper was thereupon marked “Defendant’s Exhibit No. 1.”

(The judgment referred to was admitted in evidence, and is identical with the copy thereof marked “Exhibit A” attached to the answer of Carl J. Hahn, on file herein.)

No further evidence was introduced on behalf of any of the defendants or intervenors, and Mr. Haga made the following admissions on behalf of The Equitable Trust Company of New York:

That the claims of Jake M. Shank in the sum of \$4,390.00, Guy I. Towle in the sum of \$13,963.01, and L. M. Plumer and E. B. Scull, executors as aforesaid, in the sum of \$15,625.00, have been allowed and

approved as claims against the Great Shoshone and Twin Falls Water Power Company in the general creditors' suit, wherein Guy I. Towle is plaintiff and the Great Shoshone and Twin Falls Water Power Company is defendant, being equity cause No. 509 pending in this Court.

That the Deed of Trust dated May 1, 1910, and Supplemental Mortgages dated June 21, 1911, and April 7, 1913, were recorded in the mortgage records of the several counties as alleged in the Bill of Complaint of the complainant on file herein and were not recorded in what is known as the Chattel Mortgage Record.

Before settling the statement, counsel for appellant expressly waived its last assignment of error (number 15) and therefore the statement is not made complete relative to the point therein involved.

DIETRICH, Judge.

#### ORDER SETTLING STATEMENT.

The within and foregoing statement of evidence, being tendered to me for settlement and allowance, and it appearing to me that said statement, together with objections and amendments thereto, were presented to the Court pursuant to stipulation of all parties, and upon consideration of said objections and amendments and the statement having been duly engrossed with such amendments,

IT IS CERTIFIED, that said statement is in all respects true, complete, correct, properly prepared and contains a full transcript of the evidence reduced

to narrative form pertaining to the issues raised by the Assignment of Errors.

Dated this 12th day of April, 1916.

FRANK S. DIETRICH,  
District Judge.

Endorsed, filed April 19, 1916.

W. D. McREYNOLDS,  
Clerk.

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(Title of Court and Cause.)

In Equity—No. 526.

DECISION.

*DIETRICH, DISTRICT JUDGE:*

Two general questions are presented: (1) For what amount is the plaintiff entitled to foreclose; and (2), upon what property? That bonds of the face value of \$2,230,000.00 were duly certified, and later issued for value, and are now outstanding, is admitted. It is further admitted that no part of the principal thereof has been paid, and no interest subsequent to the coupons maturing May 1, 1914. These facts constitute a prima facie showing of an indebtedness of \$2,230,000.00, besides interest thereon at the rate of five per cent from May 1, 1914. Upon the other hand, there is evidence tending to show, and sufficient, I am inclined to think upon which to base a finding, that nearly all of the bonds were issued, not absolutely, but as collateral only. There being no competent evidence that the collateral character of the holding has changed to absolute ownership, the question presented is, whether an unqualified decree

should go for the full face value of the bonds. At the oral argument it was urged that it was the right and duty of a trustee to foreclose for the full amount of the bonds which it has certified, regardless of the question whether or not the debtor has put them into circulation. No authorities have been cited in support of this view, and being unable to appreciate the reasoning upon which it is based I must decline to accept it. A bond does not become an obligation of the debtor until it is issued, and it is issued when, and only when, a third party acquires some right or interest therein. True, there need not be an absolute sale; a bond is issued as well when it is put out as collateral. But to be issued there must be an alienation of some interest therein or the creation of some lien thereon. While the trustee is not bound to show to whom bonds have been issued, or by whom they are presently held, it must assume the burden of showing how many have been issued and are outstanding, for the aggregate of the outstanding bonds is the measure of its maximum recovery. The real, and, as it seems to me, the only serious, question upon this branch of the case is whether the capacity in which outstanding bonds are held may be made an issue prior to decree and sale. The trustee says no, and directs my attention to certain cases, which, while tending to support its view, are seemingly far from being conclusive. It is to be noted that it is not a question merely of what presumptions may be indulged or of the burden of proof, or the weight of evidence. If the trustee's contention is sound, it is in-



competent for the debtor to raise such an issue at all, and evidence offered by it to show that bonds were issued only as collateral, and that the amount for which they are held is less than their face, is not receivable. Nor is it a question of the character or amount of the relief to which the collateral holder is entitled. Upon the one hand, the trustee concedes that upon the distribution of the proceeds of sale the collateral holder cannot demand an amount in excess of the actual indebtedness due him, and upon the other hand it is doubtless true that up to the amount of such claim, and until it is fully discharged, he is entitled to share ratably with other bondholders upon the basis, not of the amount of his claim, but of the face value of the bonds. But if offered by the debtor can the issue touching the just amount of the collateral claim be ignored? There are logical and practical objections of the most serious character to the trustee's position. It here prays for a judicial determination of the amount of the indebtedness secured by the trust deed and for a sale of the property to pay the same. Admittedly the maximum of the debtor's obligation, where its bonds are held as collateral only, to secure notes which it has executed, is the face of the notes and not of the bonds. How then can the court by its decree declare that the amount due is the full face of the bonds? It is urged that the matter can be controlled upon the distribution of the proceeds of sale, but, aside from the illogical aspect of such procedure, suppose the debtor desires to avoid a sale, and is able to raise the amount of money it ac-

tually owes, but no more, within the period usually granted to it under the practice, before a sale can be made. Is it to be permitted to discharge its just obligation and thus save its property? And, if so, how, in the face of the decree, is the amount of the actual indebtedness to be ascertained? Are the conditions at such a time any more favorable for the determination of the issue than they were before the entry of a decree? The parties before the Court are the same. The pertinency of these inquiries is emphasized by portions of complainant's prayer. Referring to the supplemental bill, where the relief sought is more comprehensively and particularly stated, we find that it prays "that the Court find and adjudge that the principal of the said bonds issued and outstanding as alleged in the bill of complaint herein, in the amount of \$2,230,000.00, is due and payable," etc. And again: "That an account be had and taken of the bonds, interest coupons, and interest secured by said deed of trust and supplemental mortgages, and the amount due thereon, with the names of the lawful holders or owners thereof, be ascertained; that an account be taken of all property of every kind conveyed or pledged by said deed of trust and supplemental mortgages or intended so to be, whether acquired before or after the execution and delivery thereof." And again: "That the defendant, Great Shoshone and Twin Falls Water Power Company, and William T. Wallace as receiver of its property, may be decreed to pay, within a short time to be fixed by the court, to the holders of the bonds and

coupons secured by said deed of trust and supplemental mortgages, or to your orator as trustee for said holders, the principal amount of said bonds and the defaulted interest thereon," etc.

Again, upon what basis is redemption from sale to be made if the property goes to sale, and is there to be a personal judgment over, for the entire difference between the face of the bonds and the proceeds of the sale, pursuant to the usual provision of a foreclosure decree? If so, manifestly the debtor will thus be adjudged to pay in excess of the amount of its actual debt.

While leaning toward the view that the issue may properly be presented and tried at this juncture of the proceeding, I am under the circumstances disposed to yield to the plaintiff's suggestion, that it be reserved, with the understanding that the decree shall contain appropriate qualifications and provisions guarding against injustice and against prejudice to rights which might otherwise be foreclosed. The debtor is making no defense, and, being insolvent, it is quite apparent that it has no expectation of either avoiding the sale or causing a redemption to be made therefrom. Hence no serious practical difficulties need be anticipated.

The second question arises out of the fact that the trust deed, which, under the laws of the state, is to be deemed a mortgage, is executed with the formalities only of a real estate mortgage, and is without certain requirements for, and is not recorded as, a chattel mortgage. By intervening creditors and by

the receiver it is urged that as to the personal property which the instrument purports to cover, it is void; or perhaps, speaking more accurately, it is to that extent ineffective as against the claims of other creditors. In support of this view reliance is placed upon Section 3408 of the Idaho Revised Codes, which declares that: "A mortgage of personal property is void as against creditors of the mortgagor . . . unless . . . it is accompanied by the affidavit of the mortgagor that it is made in good faith," etc. Admittedly no such affidavit was attached to or accompanies the trust deed. Against this defense the first point raised by the plaintiff is, that neither the intervening creditors nor the receiver is competent to interpose it. The argument is that the receiver stands in the shoes of the debtor, and can make no defense unavailable to it, and that the instrument being undoubtedly valid as between the mortgagee and the mortgagor, is valid as between the mortgagee and the receiver. And further, that the intervening creditors having no judgment or other lien upon, or interest in, any of the property, are without standing as parties, and cannot be heard to question the validity of the mortgage. It must be conceded that as a rule a general creditor without interest in or a lien upon mortgaged property cannot intervene in a foreclosure suit or challenge the sufficiency of the mortgage. But here, it is to be observed, a creditors' suit was brought long before the institution of the foreclosure suit, and a receiver was appointed therein to take charge of all of the mortgagor's property.



In that suit the claims of these creditors were offered, allowed, and filed, as valid subsisting claims against the estate. In *Chemical National Bank vs. Armstrong*, 59 Fed. 372, 375, where a receiver had been appointed to take charge of the assets of an insolvent bank, Judge Taft, delivering the opinion of the court, said:

“It is manifest that it would utterly defeat the object of the banking act if, after the suspension, the assets remained subject to levy, execution, or attachment and, therefore, that the passing of the assets into the hands of the receiver removes all the property of the bank from liability to process to secure satisfaction of judgments. *Bank vs. Colby*, 21 Wall. 609.

“The right which a creditor of the bank had before suspension of levying an execution to satisfy his judgment is gone, and for it is substituted a fixed and definite interest in the assets as a security for the payment of his debt, which it is the purpose of the banking act to reduce to money, and apply on his debt, with all convenient speed.”

Referring to this case, the Supreme Court of the United States, speaking through Mr. Chief Justice Fuller, in *Merrill vs. Bank*, 173 U. S. 131, 136, said:

“This was in accordance with the decision of the circuit court of appeals for the Sixth circuit, in *Chemical National Bank v. Armstrong*, 16 U. S. App. 465, Mr. Justice Brown, Circuit Judges Taft and Lurton, comprising the Court. The



opinion was delivered by Judge Taft, and discusses the question on principle with a full citation of the authorities. We concur with that court in the proposition that assets of an insolvent debtor are held under insolvency proceedings in trust for the benefit of all his creditors, and that a creditor, on proof of his claim, acquires a vested interest in the trust fund."

Recognizing the same principle, the Supreme Court of California, in *Ruggles vs. Cannedy*, 127 Cal. 290, gave it specific application to conditions analogous to those here presented. It is there said:

"In this case, the creditors had not obtained judgments against the mortgagor, nor indeed had they instituted any proceedings against him at the time he was adjudged insolvent. After that judgment by force of the insolvency act itself, they were prevented from resorting to any proceeding in law or equity for such purpose. They were limited to the presentation of claims in the insolvency court. This they did, and when these claims were allowed and approved the questions involved in them became *res adjudicata*. The presentation, allowance and approval of the claim, while not in strictness a judgment, had much of the force and effect of a judgment, and was the only thing in the nature of a judgment which creditors so situated could obtain. For the purpose of enforcing their rights against fraudulent or void acts of the insolvent, it is the equivalent of a judgment. (Roan v. Winn, 93 Mo. 503)."

Only by giving effect to such principle can great injustice be avoided, for otherwise, at the suggestion and with the encouragement of the trustee, a general creditor could bring such a suit as was here brought, and secure the appointment of a receiver, and the property having thus been placed *in custodia legis*, other general creditors would be prevented from acquiring specific liens thereon through the levy of attachment or execution process, with the result that they would be disabled from attacking an invalid mortgage, while the trustee, taking advantage of their disability, could rest secure until, upon the maturity of its right to foreclose, it could appropriate the entire property to the discharge of its claim, notwithstanding the defect in its mortgage. It will therefore be held that the creditors were properly permitted to intervene, and that they have an interest which entitles them to challenge the mortgage.

The further contention is made by the trustee that the provisions of the chattel mortgage statutes of the state are not applicable to property such as is here involved, for the reason that, while some of it, considered separately, falls within the definition of personal property, it is all to be deemed a single indissoluble unit because of its necessary relation to the public purpose to which it is devoted. Within certain limits the view finds support in *Hammock v. Farmers Loan & Trust Co.*, 105 U. S. 77, and *Farmers Loan & Trust Co. v. Detroit, etc., R. R. Co.*, 71 Fed. 29. See also *Jones on Corporate Bonds and Mortgages*, (3d Ed.), Section 137 *et seq.* While this

is not a railroad property, it is devoted to the public service, and I am inclined to think it is subject to the same considerations which were regarded as controlling in these cases; in the absence of a decision of the Supreme Court of the state to the contrary I shall therefore apply the principle which they establish to the determination of the issue here. It may be added that the decisions of the state courts, where there are no controlling statutes, are wanting in harmony, with the weight probably against the view here adopted.

Complying with the suggestion made at the hearing, counsel for the interveners have incorporated in their brief a schedule in which specifically or generally they have inventoried what they deem to be personal property. By section 3054 of the Idaho Revised Codes, real property or real estate is defined as embracing lands, mining claims, possessory rights to lands, ditch and water rights, and everything affixed or appurtenant to lands. Under this definition it is not apparent how the several water rights included in the list can be held to be personal property: But however that may be, they clearly fall within the principle of the Hammock case. So also do franchises, and such items as generators, dynamos, switch boards, and other articles of equipment (constituting essential parts of the mortgagor's generating, transmitting, and distributing system); also tools, implements, and materials, teams and conveyances, presently necessary for the maintenance, repair, and operation of the system.

The principle, however, does not extend to supplies, materials and tools in excess of present needs; to bills or accounts receivable; to cash on hand or bank balances; to stocks of merchandise which are intended for sale to the public in the ordinary course of retail business; and apparently not to the capital stock of the Jerome Water Works Company, or to the public ferry at Shoshone Falls; nor, generally speaking, to such articles of personalty as do not form constituent parts of the system, or are not presently necessary to its maintenance and operation—as to all of which the claims of the interveners will be recognized as being superior to the lien of the mortgage. The other property will be sold as a single parcel, but these items upon which it is held the creditors have a superior lien will be sold separately. Either party may, upon notice, introduce further evidence, at a date to be stated in the notice, prior to December 10, 1915, for the purpose of more completely identifying the property embraced in this latter class.

Endorsed, Filed Nov. 17, 1915.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

STIPULATION.

IT IS HEREBY STIPULATED by and between the parties hereto, that in view of the decision of the Court that the lien of complainant's mortgage is, as to certain personal property, subject and subordinate to the claims of certain of the defendants and the in-

terveners, and in view of the further fact that it is to the interest of all parties to this suit and creditors of the Great Shoshone and Twin Falls Water Power Company that all the property, rights and assets of said corporation be sold as an entirety and without delay, the decree in this cause shall provide for the sale of all of the property of the said defendant Great Shoshone and Twin Falls Water Power Company in block and as an entirety, but the sale of said premises shall not be construed as a waiver of the right of appeal of any party to this cause as to any matter relating to the distribution of the proceeds of sale, or as to any matter involved in the decision of the Court rendered herein on the 17th day of November, 1915, but all objections that might be raised on an appeal from the decree herein may be raised with the same force and effect on an appeal taken after the sale of such property under said decree.

RICHARDS & HAGA,  
Solicitors for Complainant.

P. B. CARTER,  
Solicitor for Defendant, Great Shoshone and Twin  
Falls Water Power Company.

S. H. HAYS,  
Solicitor for Receiver.

KARL PAINE,  
MARTIN & CAMERON,  
Solicitors for Defendant, Guy I. Towle.

JAMES H. WISE,  
Solicitor for Defendant, Carl J. Hahn.



MARTIN & CAMERON,

Solicitors for L. H. Plumer and E. B. Scull, Executors of Estate of L. L. McClelland.

ALFRED A. FRASER,

Solicitor for Jake M. Shank, Intervener.

Endorsed, Filed Dec. 6, 1915.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

In Equity—No. 526.

DECREE OF FORECLOSURE.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ORDERED, ADJUDGED and DECREED, as follows, viz:

*First.*

That the Deed of Trust or Indenture of Mortgage, dated May 1st, 1910, made, executed and delivered by the defendant, Great Shoshone and Twin Falls Water Power Company (hereinafter sometimes called the "Power Company") to The Trust Company of America, of the City of New York, State of New York, and James D. O'Neil, of the City of Pittsburg, State of Pennsylvania, as Trustees, and the Supplemental Mortgage or Indenture dated the 21st day of June, 1911, made, executed and delivered by the Power Company to the said The Trust Company of America and James D. O'Neil, as Trustees, and the Supplemental Mortgage dated April 7th, 1913, made, executed and delivered by the Power Company to The Equitable Trust Company of New York, complainant herein, and the said James D. O'Neil, as Trus-

tees, which said Deed of Trust or Indenture of Mortgage and Supplemental Mortgages and Indentures are sought to be foreclosed in this action, and the bonds issued thereunder, to-wit: Registered bonds numbered 1 to 48, inclusive, of the denomination of \$25,000.00 each, and coupon bonds numbered 1 to 1030, inclusive, of the denomination of \$1,000.00 each, are legal, valid and binding obligations of the Power Company; and the said Deed of Trust and Indenture of Mortgage and the said Supplemental Mortgages securing the said bonds are first and paramount liens, prior and superior to all other liens, encumbrances, right, title, interest, claim or demand of any of the parties defendant herein, and of any other person or persons who may be bound by this decree, except as hereinafter expressly provided and decreed, upon all the property, whether real, personal, or mixed, of the Power Company whensoever acquired, including the lands, premises, properties, rights, powers, privileges, and franchises more specifically described as follows, to-wit:

(There is here omitted a specific description of power sites, stations, sub-stations, other lands, buildings, transmission lines, franchise, water permits and rights, as set forth in the Amendments to the Bill of Complaint of the Complainant herein, and followed by the general description in the following paragraph.)

And generally all other rights and property of the Power Company now owned or in the process of acquisition, and whether real, personal or mixed, in-

cluding all power and other plants, water permits and rights, appropriations of water, dams, reservoirs, flumes, canals, tunnels, race ways, controlling works, water frontage, power sites, ferries, machinery, transmission and distributing lines, poles, wires, cables, telephone and telegraph lines, terminal properties, stations, sub-stations, docks, yards, machine shops, weirs, water wheels, office buildings, structures, tenements and hereditaments and appurtenances, bridges, boats, rolling stock, rights of way, dynamos, convertors, transformers, generators, switch boards, arresters, circuit breakers, meters, equipment, machinery, tools, implements, apparatus, and appliances, stores, dwelling houses, sub-ways, conduits, fixtures, supplies, furniture, chattels, stocks, bonds, certificates of interest, and other securities, choses in action, privileges, franchises, immunities, easements, accounts receivable, claims or demands due and owing to the Power Company, appurtenances, possessions, rights, tolls, rents, revenues, issues and profits, and also any and all estate, right, title and interest, property, possession, claim and demand whatsoever, as well in law as in equity, and whether specifically enumerated herein or not, of the Power Company, in and to all property whatsoever, real, personal and mixed, of every kind and description, and wheresoever situate, which the Power Company may have at any time or from any source acquired.

*Second.*

That the lien of said Deed of Trust and Indenture

of Mortgage and of the supplemental mortgages securing the said bonds, is subject and subordinate to the claims of the defendants Guy I. Towle and Carl J. Hahn as administrator of the estate of Harry M. King, deceased, and the claims of the said interveners L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, and Jake M. Shank, as to all such articles of personalty as do not form a constituent part of and are not presently necessary for the maintenance, repair and operation of the hydro-electric, generating, transmitting and distributing systems of the Power Company or reasonably necessary in conducting its business as a public service corporation, such personalty consisting of construction supplies and materials in excess of the present needs of the Power Company in conducting its business, and of bills and accounts receivable, stocks of merchandise which are intended for sale to the public in the ordinary course of retail business, the public ferry at Shoshone Falls, and stock owned by the Power Company in other corporations, which said claims have been approved and allowed in the respective amounts following, to-wit:

Guy I. Towle .....	\$13,963.01
Carl J. Hahn, as administrator of the estate of Harry M. King, deceased.....	6,225.15
L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased	15,625.00
Jake M. Shank .....	4,390.00

and there is due the said claimants respectively the sums aforesaid, with interest thereon at the rate of 7 per cent per annum from the date hereof.



*Third.*

That the Trust Company of America, one of the Trustees named in the Deed of Trust or Indenture of Mortgage dated May 1st, 1910, and in the said Supplemental Mortgage or Indenture dated June 21, 1911, and hereinbefore referred to, was duly merged into and became The Equitable Trust Company of New York, the complainant herein; and the said James D. O'Neil was thereafter removed as Trustee under said Indentures of Trust and under the Supplemental Mortgage dated April 7, 1913, and the complainant, The Equitable Trust Company of New York, thereupon became, and at the time of the commencement of this suit was, and now is, the sole Trustee under the said Deed of Trust or Indenture of Mortgage dated May 1st, 1910, and the Supplemental Mortgage or Indenture dated June 21st, 1911, and the Supplemental Mortgage dated April 7th, 1913, sought to be foreclosed in this suit, and is entitled to a decree of foreclosure in its name as sole Trustee under said mortgages and indentures of trust.

*Fourth.*

That the Power Company has duly issued and delivered, under said Deeds of Trust and Indentures of Mortgage forty-eight (48) registered bonds, numbered from 1 to 48, inclusive, each of the denomination of \$25,000.00, and each certified by the Trustee as provided in said bonds and the Deed of Trust or Indenture of Mortgage dated May 1st, 1910, securing the same, and one thousand thirty (1,030) coupon bonds, numbered from 1 to 1,030, inclusive, each



of the denomination of \$1,000.00, and each certified by the Trustee as provided in said bonds and the Deed of Trust securing the same, and has thereby promised to pay the principal thereof, to-wit: Two Million Two Hundred Thirty Thousand Dollars (\$2,230,000.00), with interest thereon at the rate of five per cent (5%) per annum, payable semi-annually; and said bonds are in all respects valid and binding obligations of the Power Company and are now outstanding in the hands of holders thereof, for value, who are entitled to the benefit and security of said Deeds of Trust and Indentures of Mortgage, without preference or priority of one over the other; and that no part of the principal sum of said outstanding bonds of the defendant Power Company has been paid and no interest has been paid thereon, subsequent to the first day of May, 1914.

*Fifth.*

That default has been made by said Power Company in the performance of the covenants and conditions of said Mortgage or Deed of Trust, and particularly in this, that said Power Company has wholly failed to pay the interest maturing November 2nd (November 1st being a legal holiday), 1914, and May 1st, 1915, on said \$2,230,000.00, par value, of bonds issued as aforesaid, or any part thereof. And the said William T. Wallace, one of the defendants herein, was on the 2nd day of November, 1914, appointed Receiver of said Power Company and immediately thereupon qualified as such Receiver, and ever since has been and now is in the possession and

control of the property of said Power Company, as the Receiver thereof; and said Receiver has not paid said interest, or any part thereof, and is without the necessary funds to pay the same.

*Sixth.*

That prior to the commencement of this suit by complainant for the foreclosure of said mortgages and deeds of trust, the holders of more than fifty per cent. (50%) of the bonds issued and outstanding thereunder, as aforesaid, requested complainant in writing, to commence and prosecute all such proceedings at law or in equity, in addition to those specifically mentioned in said deeds of trust and indentures of mortgage, as complainant might be advised is necessary or proper to protect the mortgage security and the rights of the holders of the bonds issued thereunder. And complainant, by notice or notices in writing delivered to the Power Company and the defendant, William T. Wallace, as Receiver of said Company, after default in the payment of the interest maturing on November 2nd, 1914, had continued for six months, has declared the principal sum of all bonds secured by said deeds of trust and indentures of mortgage and then outstanding to be forthwith due and payable.

*Seventh.*

That no other proceedings at law or suits in equity are now pending under the said deeds of trust or indentures of mortgage, or any of them, by the said complainant as Trustee or by any holders of bonds secured thereby, or by the holders of any coupons

attached to said bonds, to enforce the payment of said sums so covenanted to be paid by said Power Company.

*Eighth.*

That the premises and property hereinbefore described and subject to this decree, excepting the personalty described in paragraph second, constitute a single, indivisible, hydro-electric, generating, transmitting and distributing system and property appurtenant thereto and connected therewith, engaged in and charged with a public service; and such premises and property cannot be sold to advantage except in block as a single parcel, and it is agreed by all the parties hereto that all the property of said Power Company be sold as a single parcel. And to the end that the same may be sold to the best advantage, it is accordingly ORDERED that the property hereinbefore described, and all other property of the defendant Power Company of whatsoever nature or description and wheresoever situated, be sold as an entirety and as a single parcel, without redemption, by the Special Master Commissioner hereinafter named, unless the amount due complainant be paid prior to the date hereinafter fixed for making such payment.

*Ninth.*

That unless the defendant Power Company or some one of the other defendants, or some one for it or them, shall on or before the twentieth day of December, 1915, pay to the Clerk of this Court for the complainant, as Trustee for the holders of said outstanding bonds, the sum hereinbefore in paragraph

Fourth hereof, adjudged to be due as principal and interest, with interest thereon at the rate of seven per cent. (7%) per annum from the date of this decree until the date of such payment, then the said mortgaged premises, and every part and parcel thereof, shall be sold as hereinafter described; and all the right, title and equity of the defendants, except as herein otherwise expressly provided, and of each and all of them, and of all persons claiming any right, title, or interest subsequent to the date of the filing of this suit in and to the said mortgaged premises, property, rights, assets, and franchises, and every part and parcel thereof, shall be forever barred and foreclosed. But if said sum shall be paid, as herein decreed, on or before said date, then any party hereto may apply to this Court for such further relief and such further directions as shall be just and equitable. Any such payment may be made, in whole or in part, by the delivering to the Clerk for cancellation all outstanding bonds and coupons, matured and unpaid, secured by the mortgage to the complainant, which said bonds and coupons shall be accepted towards such payment at their par value.

*Tenth.*

That for the purpose of making said sale Van W. Hasbrouck, Esq., of Boise, Idaho, is hereby appointed a Special Master Commissioner of this Court to make the sale hereby ordered and decreed, and to execute and deliver a deed of conveyance of the property so to be sold to the purchaser or purchasers thereof, on the order of the Court, or of the Judge thereof, con-



firming such sale; the Court, however, reserving the right to appoint, in term time or at Chambers, another person as such Special Master, with like powers, in case of the death or disability to act of the Special Master hereby designated, or in case of his resignation or failure to act, or removal by the Court. The said Master is hereby authorized and directed to sell at public sale to the highest bidder, in conformity with the directions in this behalf hereinafter set forth and the rules and practice of this Court sitting in equity and the laws of the United States in such cases made and provided, all and singular the property, assets, rights, license, franchises, contracts, tolls, rents, profits, privileges and choses in action of the defendant Power Company, including all the property in this decree described, free from all rights, titles, interests, liens, and claims and equity of redemption of all and every of the parties to this cause, except as herein otherwise expressly provided.

IT IS FURTHER ORDERED that such sale be made by said Special Master on a day to be named by him in his notice of sale, in accordance with the request of the solicitors for complainant or by order of this Court or a Judge thereof at Chambers, at the front door of the Court House in the City of Twin Falls, Twin Falls County, Idaho, which said County is the County in which the greater part of the property of the Power Company subject to this decree is located, with power to adjourn said sale from time to time by oral announcement made at the time there-



tofore fixed for such sale, without further advertisement, but only on the request of the complainant or its solicitors or by order of the Court or a Judge thereof, without prejudice to the notice or notices of sale and without necessity of publishing any further notice. But the Special Master may nevertheless give such notice of his action by publication or otherwise as he may deem fit.

That before making said sale the Special Master shall publish a notice thereof once a week for at least four (4) weeks prior to such sale in one newspaper printed, regularly issued, and having a general circulation in Twin Falls County, State of Idaho, and also in a newspaper printed, regularly issued, and having a general circulation in Gooding County, State of Idaho, in each of which counties property of said Power Company to be sold under this decree is situated. And said notices, and each thereof, shall among other things briefly describe in general terms the real estate and other property to be sold, making reference to this decree for a more particular description thereof.

Any party to this cause and any holder or holders of any of the bonds described in complainant's bill, and any committee or agent representing any holder or holders of said bonds, as well as any other person, may bid or purchase at such sale; and the property hereby directed to be sold may be inspected by intending bidders, subject to such reasonable regulations as the Receiver of said property now in possession thereof may prescribe.

The Special Master shall receive no bid from any one offering to bid who shall not have deposited with the Special Master at or before the time of making his bid, as a pledge that he will make good his bid in case of its acceptance, the sum of Twenty-five Thousand Dollars (\$25,000.00) in money or a certified check or checks for said amount payable to the order of the Special Master, certified by a bank or trust company in the City of New York or State of Idaho. All deposits received by the Special Master, except that deposited by the bidder whose bid is provisionally accepted by said Master, shall be returned by him at the conclusion of the sale to the bidder or bidders from whom they were received.

In case any bidder shall fail to make good his bid, or shall fail to comply with any order of the Court relating to the terms of sale or the payment of the balance of the purchase price, the money, checks, or bonds deposited by said bidder or purchaser shall be forfeited, and such forfeited money, checks, or bonds shall be applied toward the payment of the expenses of such sale and any re-sale which may be ordered and to such other purposes as the Court may direct. If any sale for which a deposit shall have been made and a bid shall have been provisionally accepted by the Special Master shall not be confirmed by the Court, such deposit shall be returned to the bidder.

The Court reserves jurisdiction and power to fix, by directions to the Special Master, a minimum or up-set price for said property.

*Eleventh.*

The said Special Master is hereby ordered and directed to make full report of his proceedings hereunder, and upon the making of the Master's report of sale the purchaser, or any party to this suit, may move for confirmation thereof, and a time shall be set for the hearing of said motion and such objections as may be made at such confirmation. If the sale be not confirmed, a resale shall be ordered as authorized by law; and upon such resale the same proceedings shall be had as upon the original sale, save and except that no further notice thereof need be given than a brief notice of the time and place of resale, referring to the notices first published for the terms and conditions thereof and for the description of the property, which notice shall be published in such paper and for such duration as the Court in its order for resale may direct. If the sale be confirmed, the Court shall in such order of confirmation fix the time and terms of payment of the balance of the purchase price over and above the cash or proceeds of any certified check, deposited upon any bid at the time of sale, as hereinbefore provided, which said cash or proceeds shall be received as part of such purchase price. And in such order the Court shall likewise prescribe any further amount of the purchase price which shall be paid in cash, which amount shall be sufficient to discharge all claims against the proceeds of sale. And all undetermined preferences, claims, interests, rights, or title in or to the property to be sold, as herein provided, or the proceeds thereof,

shall be and the same are hereby transferred to the proceeds of such sale, to the end that said property may be sold absolutely free and clear of all liens, claims and encumbrances whatsoever.

The remainder of the purchase price not required to be paid in cash may be paid in cash, or the purchaser of said property may satisfy and make good the remainder of his bid, in whole or in part, by delivering to said Special Master bonds secured by the Deed of Trust or Mortgage to complainant, and matured and unpaid coupons for interest on the same, so far as they will go towards paying such remainder, which bonds and coupons, unless in negotiable form and payable to bearer, shall be duly endorsed and assigned in blank all of which bonds and coupons shall be received at such price or value as shall be equivalent to the sum which would be payable on such bonds and coupons out of the said proceeds of the sale, if such sale were made for money and the whole amount of the purchase price were paid in cash.

If there shall be realized on the sale and applied on the purchase price the full amount due on said bonds and coupons, then and in that case the said bonds and coupons, or such of them as are so paid in full, shall be cancelled and filed with the Court for such disposition as the Court may order. But if there shall not be realized on the sale and applied on the purchase price the full amount due on said bonds and coupons, the Special Master shall stamp or write on each bond or coupon the amount which is so applied thereon, and also the amount of the deficiency



remaining after such application, and shall return such bonds and coupons after they are so stamped or written upon to the owners thereof, unless the Court shall otherwise direct.

*Twelfth.*

The Court reserves jurisdiction, authority, and discretion to reject any bid which, in the judgment of the Court, is inadequate or subject to just objection; and the Court reserves the right and jurisdiction to retain and resell the property in case the purchaser, his successors or assigns, shall fail to comply with any of the provisions of this decree, or with any order or direction respecting the payment of the purchase price, or if any sale fails of confirmation.

*Thirteenth.*

Upon the confirmation of said sale and upon compliance by the purchaser with any directions which the Court may make in its order of confirmation as condition precedent to the delivery of deed, the Special Master shall execute and deliver a deed of all the properties herein described and sold by said Master, and complainant and the Power Company shall, also, execute and deliver to the purchaser confirmatory deeds and assurances of title in form approved by the Court. The purchaser, his successors or assigns, shall upon delivery of such instrument or instruments of conveyance be vested with the title to and shall hold possession and enjoy the said property sold, free and clear from all rights, title, claims, benefits and equities of redemption of all parties to this cause; and said parties and all persons claiming



from, under or through them, or either of them, their heirs, personal representatives, successors and assigns, and all persons claiming to have acquired any estate or interest in said premises subsequent to the filing of the Bill in this cause shall be forever barred and foreclosed of and from all equity and claim of, in and to the mortgaged premises and every part and parcel thereof, from and after delivery of the said Master's deed.

*Fourteenth.*

That the proceeds of sale of said premises and property so sold by said Special Master, shall be apportioned and divided into two funds, hereinafter sometimes called, respectively, the "Bond Fund" and the "Unsecured Creditors' Fund," and such apportionment or division of the proceeds of said sale shall be made according to the relative value of the premises, property and assets upon which complainant has herein been decreed a first, paramount and superior lien, and the personal property described generally in paragraph Second hereof and upon which certain creditors of the defendant Power Company have been decreed a lien prior and superior to the lien of complainant, all as set forth in said paragraph Second. And the "Bond Fund" shall be that part of the proceeds of sale produced by or derived from a sale of the premises and property upon which complainant has herein been decreed a first, paramount and superior lien as aforesaid, the same being all the premises, property and assets of the defendant Power Company except that certain personal property of

said defendant expressly made subject to the claims of certain creditors of said defendant Power Company, as set forth in paragraph Second of this decree. And the "Unsecured Creditors' Fund" shall be that part of the proceeds of sale produced by or derived from a sale of that certain personal property described generally in paragraph Second hereof and upon which the lien of complainant has been decreed subject and subordinate to the claims of certain creditors of the Power Company, as set forth in said paragraph Second. And the Court reserves jurisdiction, power and authority to apportion or divide the proceeds of sale as aforesaid, and any party to this suit may upon notice to all parties bring on for hearing the matter of apportioning or dividing such proceeds of sale into the funds and upon the basis aforesaid.

*Fifteenth.*

That the "Unsecured Creditors' Fund," being the proceeds of said sale produced by or derived from a sale of that certain personal property described generally in paragraph Second of this decree and upon which the lien of complainant is subject and subordinate to the claims of certain creditors of the Power Company, shall be applied as follows:

(a) To the payment, pro rata with the Bond Fund, according to the ratio that it bears to the gross proceeds of sale, of all proper expenses attendant upon said sale, including the expense, outlays and compensation of the Special Master in making such

sale, as such expense, outlays and compensation may be hereafter fixed and allowed;

(b) To the payment, pro rata with the Bond Fund, according to the ration that it bears to the gross proceeds of sale, of the cost and expenses of the cause now pending in this Court wherein the said Guy I. Towle is plaintiff and the said Power Company is defendant, being Equity Cause No. 509, in which the said William T. Wallace was on the 2nd day of November, 1914, appointed Receiver of said Power Company, including the Receiver's expenses and charges allowed in said cause and the expenses of administering the estate by said Receiver; but only after exhausting the income and other funds, if any, in the hands of said Receiver especially applicable to such purpose;

(c) To the payment of the claims of the said Guy I. Towle, Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, L. M. Plumer and E. B. Scull, as executors of the estate of L. L. McClelland, deceased, and Jake M. Shank, as the same have been determined and allowed in paragraph Second of this decree, and if the amount available for such payment shall be insufficient to pay all of said claims in full, then to the payment thereof pro rata according to the amount due said claimants respectively.

(d) Should there be any surplus after payment in full of the foregoing amounts, the same shall be converted into the Bond Fund to be paid out and distributed as hereinafter provided for the payment of claims out of said fund.

*Sixteenth.*

That the Bond Fund, being the proceeds of said sale produced by or derived from the sale of the premises and property upon which complainant has herein been decreed a first, paramount and superior lien, shall be applied as follows:

(a) To the payment, pro rata with the Unsecured Creditors' Fund, according to the ratio that it bears to the gross proceeds of sale, of all proper expenses attendant upon said sale, including the expenses, outlays and compensation of the Special Master in making such sale, as such expenses, outlays and compensation may be hereafter fixed and allowed;

(b) To the payment, pro rata with the Unsecured Creditors' Fund, according to the ratio that it bears to the gross proceeds of sale, of the costs and expenses of the cause now pending in this Court wherein the said Guy I. Towle is plaintiff and the said Power Company is defendant, being Equity Cause No. 509, in which the said William T. Wallace was on the 2nd day of November, 1914, appointed Receiver of said Power Company, including the Receiver's expenses and charges allowed in said cause and the expenses of administering the estate by said Receiver; but only after exhausting the income and other funds, if any, in the hands of said Receiver especially applicable to such purpose;

(c) To the payment of the costs of this suit and the compensation of the complainant herein for its services, charges, and expenses in the execution of its

trust under said Deeds of Trust or Indentures of Mortgage, so made to it as aforesaid, including its own compensation and commissions and its disbursements for solicitors and counsel fees in the execution of said trust and the foreclosure of said mortgages, as such charges, expenses, and compensation may be hereafter fixed and allowed by this court.

(d) To the payment of claims and demands, if any there be, which may be awarded priority over said bonds and preference over the same in the distribution of the assets of the estate of the Power Company, and which, because of insufficient funds, cannot be paid out of the funds in the hands of the Receiver or out of the Unsecured Creditors' Fund.

(e) To the payment of principal and interest on the bonds and coupons herein found to be due and payable; but in the event the said proceeds of sale are insufficient to pay all of said bonds and coupons and interest thereon in full, the said proceeds shall be ratably distributed among the holders thereof, without preference of one over another; provided, however, that the Court reserves jurisdiction and power to hereafter determine the amount due from the Power Company to the several holders of said bonds and coupons, and if any of said bonds or coupons be held as security for obligations of the Power Company, the holder thereof shall in no event be paid more than the amount due from the Power Company under the obligation or obligations for the payment of which said bonds or coupons may be held as collateral.



(f) If, after making all the above payments, there shall be any surplus, the same shall be paid according to the further order of the Court in that regard.

*Seventeenth.*

That in case there shall be any deficiency in the amount required to be paid in full of the several amounts directed and allowed to be paid, then the said Special Master shall report to the Court the amount of the deficiency; and the complainant, as Trustee, shall have judgment against the said defendant Power Company for the amount due, and shall have execution therefor, pursuant to the rules and practice of this Court.

*Eighteenth.*

The Court retains and preserves power and jurisdiction to make such further orders as are or may be necessary to carry out this decree and to vest title in the properties subject hereto in the purchaser or purchasers thereof, and to adjudicate claims against and distribute any surplus proceeds arising from the sale, after the satisfaction of complainant's said claim, and to restore to the Receiver in Cause No. 509 out of the proceeds of said sale, such part, if any, of the income or earnings in such cause, as may have been expended or paid out in discharge of the interest upon underlying bonds, indebtedness incurred for construction work, sinking fund and other non-operating purposes, and to make any further order in the premises that may be meet and just. The cash in the hands of said Receiver or in bank

shall be subject to such order as may be made relative thereto in said Cause No. 509, and all such cash and funds in banks shall be unaffected by this decree, but no right or claim thereto is waived by any party to this cause or affected by anything contained in this decree.

*Nineteenth.*

The provisions of this decree shall not be construed as establishing a lien in favor of the Trustee or bondholders upon the income or earnings during the receivership, including earnings uncollected, or as foreclosing the claims of general creditors to have such earnings and income distributed to them; but all such claims may be adjudicated, determined and established in Equity Cause No. 509 pending in this Court, wherein Guy I. Towle is plaintiff and the said Great Shoshone and Twin Falls Water Power Company is defendant.

Any party may apply to the Court for further orders and directions at the foot of this decree.

Done this 6th day of December, 1915.

FRANK S. DIETRICH,  
District Judge.

Endorsed: Filed Dec. 6th, 1915.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, through their respective solicitors, that the personal property refer-

red to in paragraph Second and other paragraphs of the Decree entered in this cause on December 6th, 1915, consisting of construction supplies and materials in excess of the present needs of the Power Company in conducting its business, and of bills and accounts receivable, stocks of merchandise which are intended for sale to the public in the ordinary course of retail business, the public ferry at Shoshone Falls, and stock owned by the Power Company in other corporations, being the property upon which the interveners and certain of the defendants were adjudged to have claims prior and superior to the lien of complainant, is of the reasonable value of Forty-five Thousand Dollars (\$45,000.00); it is further stipulated and agreed that in apportioning the proceeds derived from the sale of the property of the defendant Power Company under said decree, said sum of \$45,000.00 shall be placed into what is in said decree sometimes called the "Unsecured Creditors' Fund," to be apportioned and distributed as in said decree provided, relative to the payment and distribution of such Unsecured Creditors' Fund.

This stipulation is made to avoid the necessity of a hearing for the purpose of apportioning the proceeds of sale, as provided in paragraph Fourteen of said Decree, and nothing herein contained shall be construed as a waiver of any right by any of the parties hereto except or object to or appeal from any of the provisions of said Decree, or any order hereafter made based on said decree.

Dated this 24th day of December, 1915.

RICHARDS & HAGA,

Solicitors for Complainant.

KARL PAINE,

Solicitor for Defendant Guy I. Towle.

JAMES H. WISE,

Solicitor for Defendant Carl J. Hahn.

MARTIN & CAMERON,

Solicitors for L. M. Plumer and E. B. Scull.

ALFRED A. FRASER,

Solicitor for Jake M. Shank.

P. B. CARTER,

Solicitor for Defendant Great Shoshone and Twin Falls Water Power Company.

Endorsed: Filed Dec. 29, 1915.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

In Equity—No. 526.

ORDER.

It appearing that all parties to the cause have stipulated in writing that the personal property referred to in paragraph Second of the decree entered in this cause on December 6th, 1915, consisting of construction supplies and materials in excess of the present needs of the Power Company in conducting its business, and of bills and accounts receivable, stocks of merchandise which are intended for sale to the public in the ordinary course of retail business, the public ferry at Shoshone Falls, and stock owned by the Power Company in other corporations, being the property upon which the interveners and certain of

the defendants were adjudged to have claims prior and superior to the lien of complainant, is of the reasonable value of Forty-five Thousand Dollars (\$45,000.00).

IT IS THEREFORE ORDERED that the proceeds from the sale of the property of the defendant Great Shoshone and Twin Falls Water Power Company shall be apportioned as follows: Forty-five Thousand Dollars (\$45,000.00) of the proceeds of said sale shall be placed to the credit of the Unsecured Creditors' Fund referred to in said decree, and the balance of said proceeds shall be placed to the credit of what is referred to in said decree as the "Bond Fund."

Done in open Court this 27th day of December, 1915.

FRANK S. DIETRICH,  
District Judge.

Endorsed. Filed Dec. 29th, 1915.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

In Equity—No. 526.

NOTICE OF MOTION FOR CONFIRMATION OF  
SALE.

To the above-named defendants and to their solicitors of record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE, that on Monday, the 14th day of February, 1916, at 10 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, the undersigned, solicitor of record for plaintiff,



Equitable Trust Company of New York, will on behalf of said plaintiff move said Court at the Court Room thereof in the Federal Building at Boise, Idaho, for an order confirming the Master's sale of the properties of the defendant, Great Shoshone and Twin Falls Water Power Company, held on January 8, 1916, and directing the execution and delivery of a deed to the purchaser at said sale, Electric Investment Company, in accordance with written motion, copy of which is herewith served upon you. Said motion will be based upon the decree in said cause and upon the Master's report of said sale filed with the Clerk of this Court on January 14, 1916.

Dated this 25th day of January, 1916.

RICHARDS & HAGA,  
Solicitors for Plaintiff.

Endorsed: Filed Feb'y 1, 1916.

W. D. McReynolds, Clerk.

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(Title of Court and Cause.)

In Equity—No. 526.

MOTION FOR CONFIRMATION OF SALE.

Comes now the plaintiff, Equitable Trust Company of New York, and moves the Court for an order confirming the sale of all the property rights and assets of the defendant Great Shoshone and Twin Falls Water Power Company to Electric Investment Company, made on the 8th day of January, 1916, by the Special Master appointed in said cause, and directing the Master to execute and deliver a deed to the purchaser of all such property, rights, and as-

sets. This motion will be based upon the Special Master's report of said sale and the records and files in the cause.

Dated this 25th day of January, 1916.

RICHARDS & HAGA,  
Solicitors for Plaintiff.

Endorsed: Filed Feb'y 3, 1916.

W. D. McReynolds, Clerk.

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(Title of Court and Cause.)

In Equity—No. 526.

ORDER CONFIRMING SALE.

Now, on the 14th day of February, 1916, come again the parties by their respective solicitors, and the purchaser, the Electric Investment Company, by its counsel, and the motion of the complainant, Equitable Trust Company of New York, Trustee, that the report of Van W. Hasbrouck, the Special Master, filed herein on the 14th day of January, 1916, should be approved and confirmed, and that the sale of the mortgaged property, power plants, transmission lines, equipment, machinery, lands, water rights, franchises and property of the defendant, Great Shoshone and Twin Falls Water Power Company, should be confirmed and made absolute, came regularly on to be heard, pursuant to notice served upon all the parties to this cause, as evidenced by written acceptance of service by the respective solicitors of the said parties.

The Court having examined the report of the Special Master and the exhibits attached thereto, and it

principal amount of \$1,000, numbered from 1 to 1030, consecutively, both inclusive, payable to bearer, with November 1, 1913, and all subsequent coupons attached, aggregating in principal amount \$1,030,000; and will produce the certificate of said Trust Company that it holds the said bonds, and each and all of them, and the coupons thereto attached, subject to the order of said Special Master and the Judge of this Court on account of the purchase price of said property;

And it further appearing that said bonds are all the outstanding bonds of said Great Shoshone and Twin Falls Water Power Company, secured by said deeds of trust and indentures of mortgage, and that said purchaser is ready, able and willing to pay forthwith, in cash, such amount as shall be sufficient to discharge all claims against the proceeds of sale required to be paid in cash under the terms of said decree, upon being advised of the amount required for such purpose.

It is, therefore, further ordered, adjudged and decreed that such provision for the payment of the residue of said bid of said purchaser is satisfactory to this Court, and is hereby approved by this Court.

It is further ordered, adjudged and decreed that upon delivery by said purchaser to said Special Master of said certificate, or certificates, of said Trust Company, showing the deposit of said bonds, as aforesaid, the Special Master shall sign, seal, execute, acknowledge and deliver a deed, or deeds, of conveyance to said purchaser of all and singular the prop-

erty, power plants, transmission lines, equipment, machinery, lands, water rights and franchises, so sold, as aforesaid; that the defendant, Great Shoshone and Twin Falls Water Power Company, and the complainant, Equitable Trust Company of New York, as sole trustee, under the deed of trust, made by said Great Shoshone and Twin Falls Water Power Company, dated May 1, 1910, and the supplementary mortgages, dated June 21, 1911, and April 7, 1913, and the Receiver in this cause, respectively, join in said deed, or deeds, of said Special Master, or execute and deliver separate confirmatory conveyances or deeds of the property embraced therein on demand of the purchaser, its successors or assigns, and that in default, or upon failure or refusal of any or either of said parties, to execute such confirmatory deeds or join in such Special Master's deed, the Clerk of this Court is hereby appointed Commissioner of this Court for the purpose of making, executing, acknowledging and delivering such deed, or deeds, conveying all its, their, or his, interest in the property, rights and franchises so sold, as aforesaid. The parties having filed a stipulation with the Clerk of the Court and the Court having ordered that what is known as the "water works system" in the Village of Shoshone, shall be conveyed direct to said Village by the Receiver, this order of confirmation shall not be construed as embracing such property, but the same shall be unaffected by anything herein contained and by anything that may be contained in such Master's deed, and such property shall be con-



veyed in accordance with the order entered herein on the 14th day of February, 1916, relative to the conveyance thereof.

It is further ordered and decreed that upon the delivery to said purchaser of said deed, or deeds, of conveyance, to be made by said Special Master, the said purchaser, the Electric Investment Company, shall fully possess and be invested with said property, power plants, transmission lines, equipment, machinery, lands, water rights and franchises, so sold and so conveyed, as the absolute owner thereof; that on the exhibition to him of said deed, or deeds, the Receiver of this Court who until such exhibition thereof to him shall continue as heretofore the operation of the mortgaged premises, is authorized and directed, and is required, to let said grantee into possession of the premises and property conveyed; that the Receiver, or any party to this cause having possession of the same, deliver to said grantee all property embraced in said Special Master's deed, or deeds, together with and including all earnings and income thereof not embraced in the earnings and income of the receivership, as shown by the books of the Receiver at the close of business on the 31st day of January, 1916, to the end that the purchaser may receive such property with all earnings and income thereof subsequent to the 31st day of January, 1916, and since the reading of the meters for the month of January; that the Receiver shall pay all expenses of operation and other expenses, obligations and accounts incurred by him up to the 1st day of Febru-



ary, 1916, and the purchaser shall pay all expenses of operation, obligations and accounts incurred by the Receiver in the regular course of business subsequent to the 31st day of January, 1916, to the end that the books of the Receiver may be closed as of said date; that the right of the purchaser in and to the cash on hand at the close of business on the 31st day of January, 1916, or any part thereof, shall be reserved for future determination and order in Equity Cause No. 509.

That the purchaser, Electric Investment Company, shall be, and is hereby subrogated, upon receiving said conveyance, or conveyances, to all and singular the rights of all parties to this action with respect to said property, power plants, transmission lines, equipment, machinery, lands, water rights and franchises, sold, as aforesaid, with the right to prosecute and defend all issues relative to its title to or interest in the moneys, bills and accounts receivable, and other property in the possession of the Receiver in Equity Cause No. 509, and all other actions and proceedings involving or relating to the said property, rights and franchises, or any part thereof, whether in the name of any of the parties hereto, or of said Receiver, or otherwise, as may be proper under the circumstances of the case, including the right to prosecute proceedings in error or on appeal.

It is further ordered and decreed that said first mortgage bonds and coupons deposited with the complainant, Equitable Trust Company of New York, and forming the subject of its certificate or certifi-

cates of deposit, which may be delivered to such Special Master, remain on deposit with said complainant, Trust Company, to abide the further order of the Court herein.

It is further ordered and decreed that after payment of the amounts by said decree directed to be paid in priority to the said bonds, any residue of the fund realized from said sale shall be applied in accordance with said decree, and as therein directed, toward the payment of the amount by said decree adjudged to be due at the date thereof; that all allowances and compensation for complainant and its counsel and for costs and disbursements properly taxable in this cause are reserved for future order, and pending such determination and other matters herein reserved, the distribution of the proceeds of sale shall abide the further order of the Court herein.

That the delivery of said deed, or deeds, of conveyance, and of the possession of said property, rights and franchises, sold, as aforesaid, shall be subject to the right of the Court to require such further payment or payments to be made in cash on account of such purchase price bid in order to meet the claims which, under said decree, are or may become payable out of the proceeds of sale in priority to the said amount due on said first mortgage bonds as the Court may, from time to time, direct, and the Court reserves the right, in case such purchaser, its successors or assigns, shall fail or neglect to make any payment in cash on account of any unpaid balance of the purchase price bid within fifteen days after the

entry of an order requiring such payment, and service of a copy of said order upon said purchaser, its successors or assigns, to retake and resell such mortgaged property, power plants, transmission lines, equipment, machinery, lands, water rights and franchises, and jurisdiction of this cause is retained for that purpose, and to the end that the jurisdiction of the Court over the purchaser shall be complete in the premises, it is ordered that the purchaser, the Electric Investment Company, enter its appearance in this cause and in Cause No. 509 by a member of the bar of this Court before the delivery of such Master's deed, and said Electric Investment Company shall thereupon be and become a party therein and thereto for all purposes affecting its interest in the property and moneys herein referred to.

The Court further retains jurisdiction of the cause for the purpose of determining the amount of the deficiency judgment, if any, to which complainant may be entitled.

The Special Master shall deposit in a national bank in Boise, Idaho, the cash received by him from said Electric Investment Company, its successors or assigns, subject to such disposition as the Court may make, the same to be disbursed and paid out upon checks signed by the Special Master and counter-signed by the Judge of this Court.

Dated February 16th, 1916.

FRANK S. DIETRICH,  
District Judge.

Endorsed: Filed Feby. 16, 1916. W. D. McReynolds, Clerk.

(Title of Court and Cause.)

In Equity—No. 526.

NOTICE OF APPEARANCE OF ELECTRIC INVESTMENT COMPANY.

To the Clerk of said Court and to the Solicitors of Record for the parties above named:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE, That the Electric Investment Company, the purchaser of the properties of the Great Shoshone and Twin Falls Water Power Company sold under the decree of foreclosure entered in the above entitled cause on December 6, 1915, hereby enters its appearance in said cause in accordance with and for all purposes contemplated by the order of confirmation of sale made herein on the 16th day of February, 1916.

Dated this 21st day of February, 1916.

ELECTRIC INVESTMENT COMPANY,

By F. F. Johnson, President.

RICHARDS & HAGA,

Solicitors for Electric Investment Company.

Residence: Boise, Idaho.

Endorsed: Filed Feby. 22, 1916. W. D. McReynolds, Clerk. By Pearl E. Zanger, Deputy.

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(Title of Court and Cause.)

In Equity—No. 526.

PETITION FOR ORDER TO SPECIAL MASTER TO PAY PRIOR LIEN CLAIMS OF GUY I. TOWLE; CARL J. HAHN AS ADMINISTRATOR OF THE ESTATE OF HARRY M. KING;

AND L. M. PLUMER AND E. B. SCULL AS EXECUTORS OF THE ESTATE OF L. L. M'CLELLAND, DECEASED, AND JAKE M. SHANK.

The petition of Guy I. Towle; Carl J. Hahn, as administrator of the estate of Harry M. King, deceased; L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, respectfully shows:

1. That on the 2nd day of November, 1914, William T. Wallace was duly and regularly appointed the receiver of the property of the insolvent defendant Great Shoshone and Twin Falls Water Power Company, and after becoming duly qualified as such, by giving and filing the due, regular and proper bond as required, the said receiver took possession, on or about the above said date, of all of the property of said insolvent corporation, defendant herein.

2. That at the time said receiver took possession of said property, all of said property of said Great Shoshone and Twin Falls Water Power Company, including all real, personal and mixed property, was covered by the lien of a deed of trust or mortgage given to secure a series of bonds, the form and tenor of which said bonds are set out at length in the deed of trust, dated May 1, 1910, which said deed of trust was duly made and executed by said Great Shoshone and Twin Falls Water Power Company, on the 21st day of July, 1910, in order to secure the due and punctual payment of the principal and interest of all of said bonds at any time issued and outstanding, to the Trust Company of America and James D.



O'Neil, as trustees and their successors in the trusts therein created, as shown by the said deed of trust, a copy of which is annexed to the bill of complaint herein, marked Exhibit "A", and the supplemental mortgage bearing date June 21, 1911, between the same parties, annexed to said bill of complaint and marked Exhibit "B", and the supplemental mortgage bearing date the 7th day of April, 1913, between the Great Shoshone and Twin Falls Water Power Company and the Equitable Trust Company of New York, successor by merger to the Trust Company of America, and James D. O'Neil, annexed to said bill of complaint, marked Exhibit "C".

3. That thereafter on the 14th day of April, 1915, the complainant, The Equitable Trust Company of New York, filed its bill of complaint in this action to foreclose the said deed of trust and supplemental mortgages, and made the above named defendants, defendants in said foreclosure action, including in the said defendants the said William T. Wallace, receiver.

4. That on the 16th day of October, 1916, (?) L. M. Plumer and E. B. Scull, as executors of the estate of L. L. McClelland, deceased, and within the next few days thereafter, Jake M. Shank, Carl J. Hahn as administrator of the estate of Harry M. King, deceased, and Guy I. Towle, proved their claims in the suit, in this Court, entitled Guy I. Towle, Plaintiff, vs. Great Shoshone and Twin Falls Water Power Company, Defendant, the same being Cause No. 509 in which the said Wm. T. Wallace was on Nov. 2,

1914, appointed receiver and received an order of this Court setting forth that upon the hearing of these respective claims, it was admitted by the said receiver, appearing in person and by his attorney, S. H. Hays, that the claims set forth by the respective claimants above named, appear upon the books of the said Great Shoshone and Twin Falls Water Power Company as valid and existing claims against the said company, whereupon the said claims were duly and regularly allowed in the sums as set forth hereinafter, to-wit:

Guy I. Towle.....	\$13,963.01
Carl J. Hahn as administrator of the estate of Harry M. King, deceased....	6,225.15
L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, de- ceased .....	15,625.00
Jake M. Shank.....	4,390.00

5. That thereafter on the 23rd day of October, 1915, your petitioners L. M. Plumer and E. B. Scull, as executors of the estate of L. L. McClelland, deceased, and Jake M. Shank, petitioned to intervene in this action, on behalf of themselves only, and set up certain defenses, which said interveners believed to be valid, and which defenses, the interveners believed would entitle them to prior liens over the lien of the deed of trust and supplemental mortgages, in certain personal property of the Great Shoshone and Twin Falls Water Power Company, and this Court allowed the intervention of these two said claimants. That these two said claimants and the

other two of your petitioners who had been made defendants in the foreclosure suit in the first instance, viz. Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, and Guy I. Towle, then duly and regularly filed their separate answers, answering for themselves, respectively, only and individually, setting up their defenses to the said deed of trust and said supplemental mortgages; that the said receiver, defendant herein, filed his answer in this cause subsequent to the filing of the answers on the part of these four petitioners, and did not see fit to set up the defenses set up by these four claimants in their respective answers, but by the receiver's answer joined no issue on the bill of complaint herein, and did not raise the objections to said deed of trust and supplemental mortgages for the general creditors appearing by and through the said receiver only, which were raised by these four petitioners in their individual answers, filed each for himself herein, and upon the hearing, when the receiver and his attorney were present in open court, the receiver did not ask leave to amend his pleadings so as to set up the objections to the deed of trust and supplemental mortgages, which had been set up by your four petitioners.

6. That thereafter, on the 25th day of October, 1915, this cause came on for hearing in open court, without a jury, the defendant Great Shoshone and Twin Falls Water Power Company, had not filed an answer herein when the hearing commenced, but after the proceedings had been carried on at the

hearing for a few hours, P. B. Carter, Esq., an attorney of this court, appeared in court at the hearing and said to the court that he had just received a telegram from Mr. H. Hobart Porter, who was president of the American Water Works and Electric Company and also the president of the Great Shoshone and Twin Falls Water Power Company, in which H. Hobart Porter had instructed Mr. Carter to file an answer in this cause on behalf of the Great Shoshone and Twin Falls Water Power Company admitting all of the allegations of the bill of complaint herein. Whereupon, the court asked what was his object in filing the answer this late in the proceedings when it tendered no issue, and Mr. Carter answered that he was instructed by Mr. Porter to do so, and the court did not order the filing of the answer. That after the evidence in the cause was submitted and defendants Towle and Carl J. Hahn and the interveners had made their due and regular objections thereto in accordance with the issues tendered by their respective answers, and the argument of counsel for the respective parties, the court then took the cause under advisement.

7. That on the 6th day of December, 1915, this court rendered its decree, wherein it was ordered, adjudged and decreed, among other things, and the said William T. Wallace, as receiver of the Great Shoshone and Twin Falls Water Power Company is made a party to and bound by the terms of the decree, as follows: That the said deed of trust and supplemental mortgages, above described and referred to



“are first and paramount liens, prior and superior to all other liens, incumbrances, right, title, interest, claim or demand of any of the parties defendant herein, and of any other person or persons who may be bound by this decree, except as hereinafter expressly provided and decreed, upon all the property, whether real, personal or mixed, of the said Great Shoshone and Twin Falls Water Power Company, whensoever acquired.”

Second: “That the said lien of said deed of trust and supplemental mortgages securing said bonds, is subject and subordinate to the claims of defendants Guy I. Towle and Carl J. Hahn as administrator of the estate of Harry M. King, deceased, and the claims of the said interveners L. M. Plummer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, and Jake M. Shank, as to all such articles of personalty as do not form a constituent part of and are not presently necessary for the maintenance, repair and operation of the hydro-electric, generating, transmitting and distributing system of the Great Shoshone and Twin Falls Water Power Company or reasonably necessary in conducting its business as a public service corporation, such personalty consisting of construction supplies and materials in excess of the present needs of the said power company in conducting its business, and of bills and accounts receivable, stocks of merchandise which are intended for sale to the public in the ordinary course of retail business, the public ferry at Shoshone Falls, and stock owned by the Power Company in other cor-



porations, which said claims have been approved and allowed in the respective amounts following, to-wit:

Guy I. Towle . . . . . \$13,963.01

Carl J. Hahn, as administrator of the estate of Harry M. King, deceased . . . . . 6,225.15

L. M. Plummer and E. B. Scull, as executors of the estate of L. L. McClelland, deceased . . . . . 15,625.00

Jake M. Shank . . . . . 4,390.00

and there is due the said claimants respectively the sums aforesaid, with interest thereon at the rate of 7% per annum from the date hereof. (Dec. 6, 1915.)

Third: That the amount of the bonds outstanding and issued by the power company is \$2,230,000.00.

Fourth: That the premises and property of the said Power Company subject to this decree, except the personally described in paragraph second of this decree, constitute a single, indivisible, hydro-electric, generating, transmitting and distributing system and property appurtenant thereto and connected therewith engaged in and charged with a public service; and such premises and property cannot be sold to advantage except in a block as a single parcel, and it is agreed by all of the parties hereto (including interveners) that all the property of said Power Company be sold as a single parcel. And to the end that the same may be sold to the best advantage, it is accordingly ordered that the property hereinbefore described, and all other property of the defendant Power Company of whatsoever nature or description and wheresoever situated, be sold as an entirety and

as a single parcel, without redemption, by the special master commissioner, hereinafter named, unless the amount due complainant be paid prior to the date hereinafter fixed for making such payment.”

8. That said decree provided, that if the sale be confirmed, the Court shall in such order of confirmation fix the time and terms of payment of the balance of the purchase price over and above the cash or proceeds of any certified check, deposited upon any bid at the time of the sale, as hereinbefore provided, which said cash or proceeds shall be received as part of such purchase price. And in such order the Court shall likewise prescribe any further amount of the purchase price which shall be paid in cash, which amount shall be sufficient to discharge all claims against the proceeds of sale.

9. That said decree provided that that part of the proceeds of the sale produced by or derived from a sale of that certain personal property described generally in paragraph second of the decree, and upon which the lien of complainant is subject and subordinate to the liens of these petitioners, should be applied as follows:

(a) To the payment of petitioner's proportion of the expenses of the master's sale.

(b) To the payment of the petitioner's proportion of the expenses in the suit of Guy I. Towle, plaintiff, vs. The Great Shoshone and Twin Falls Water Power Company.

(c) To the payment of the liens of these petitioners.

(d) Any surplus should go to the complainant.

10. That on or about the 29th day of December, 1915, your petitioners stipulated in writing with complainant herein that the value of the personal property upon which this Court had decreed that your petitioners had a superior lien to that of the lien of the deed of trust and supplemental mortgages, was \$45,000.00. That said stipulation was entered into by petitioners herein, with the knowledge that all claimants and especially the American Water Works and Electric Company had notice of the foreclosure proceedings herein and had allowed the receiver to represent their claims in this action, and to become bound by the decree, and had not seen fit to set up the objections to the deed of trust and supplemental mortgages which were set up by the petitioners herein, although their time and opportunity to do so were equally as good as that of your petitioners, and your petitioners relied upon the terms of the decree as binding upon the receiver and all other general creditors, including the American Water Works and Electric Company, and on account of said decree binding said general creditors and the receiver, your petitioners felt secure in making a stipulation to the effect that the value of the personal property upon which your petitioners had prior liens was only \$45,000, as that amount was sufficient in the judgment of your petitioners to cover the claims of your petitioners.

11. That thereafter, on or about the 30th day of December, 1915, this Court, after due and regular

hearing, fixed the upset price upon all the property of the Great Shoshone and Twin Falls Water Power Company at \$2,000,000.

12. That thereafter, on the 8th day of January, 1916, the special master commissioner of this Court sold all of the property of said Great Shoshone and Twin Falls Water Power Company to the Electric Investment Company for \$2,000,000, and that on or about the 13th day of January, 1916, the special master filed herein his report of said sale.

13. That on or about the 14th day of February, 1916, the complainant noticed a motion for an order confirming the sale of said property, and on said date the said motion came regularly on for hearing before this Court, and all the parties to this suit were represented by their respective counsel, and upon this day also came Frank T. Wyman, Esq., claiming to represent a general unsecured creditor of the said Great Shoshone and Twin Falls Water Power Company, to-wit, the American Water Works and Electric Company, with a claim purported to amount to over a million dollars, and begged leave to intervene in this action in the following terms, to-wit:

“The petition of the American Water Works and Electric Company, a corporation, respectfully shows:

1.

“That your petitioner now and during all the times hereinafter mentioned was a corporation duly organized under and by virtue of the laws of the State of

.....



2.

“That heretofore Guy I. Towle brought in this Court a suit in the nature of a general creditors’ suit against the Great Shoshone and Twin Falls Water Power Company, which is now pending; that thereupon a receiver was duly appointed therein under the direction of this Court who took and still retains possession of the assets of the Great Shoshone and Twin Falls Water Power Company.

3.

“That thereafter notice was published and given by the said receiver, acting under the direction of the Court, requiring all creditors of the said defendant to file proof of their respective claims within a time fixed in said notice; that pursuant thereto your petitioner and other creditors within such period presented their several claims to the receiver and filed them in the manner and form as required by said notice; that the claim of your petitioner is just and no objection has been filed against the allowance of the same.

4.

“That after the bringing of the said suit hereinbefore referred to and the appointment of the receiver therein, suit was brought for the foreclosure of a mortgage given by the said Great Shoshone and Twin Falls Water Power Company upon all its properties and such proceedings were thereafter had, that the said mortgage was foreclosed and the said property of said defendant was under the order of this Court sold by a master; that notice of motion for the con-



firmation of such sale has been given and hearing thereon is now set for February 14, 1916; that so far as your petitioner knows, there are no objections to such confirmation except such as may be involved in the matters set forth in the petition and the bill of intervention herewith presented.

## 5.

“That your petitioner is interested in the said property and in the proceeds thereof in common with all other general creditors of the Great Shoshone and Twin Falls Water Power Company; that the said proceeds are about to be paid by the purchaser at such sale to the master appointed by this Court, to conduct the same, and by such master such proceeds are about to be distributed to a small number of said general creditors hereinbefore referred to and to the exclusion of your petitioner and the greater part of such general creditors; that the particular facts with respect to such matters hereinbefore referred to are more fully set forth in the bill of intervention herewith presented.

“Your petitioner therefore prays that it may be permitted to intervene in said action and file its said bill of intervention to the end that its rights and those of all other general creditors of said Great Shoshone and Twin Falls Water Power Company may be protected and preserved and that the said fund hereinbefore referred to be not distributed or otherwise disposed of until after the hearing upon said bill in intervention, and that it then be paid to the receiver hereinbefore mentioned for distribution to the gen-

eral creditors of said Great Shoshone and Twin Falls Water Power Company.

“WYMAN & WYMAN,  
“Solicitors for American Water Works and  
Electric Company.

“FRANK T. WYMAN, of Counsel.”

14. That this Court did not allow the petition to intervene and asked counsel for the petition for leave to intervene if he wanted to make a further showing and counsel for petitioner to intervene said that he thought perhaps he would, and the Court thereupon inquired if counsel for petitioner to intervene could not wire for additional information, and counsel for petitioner to intervene said that he could.

15. That the order for confirmation was then taken up and its terms discussed and the attorneys for complainant were directed by the Court to make certain changes in its terms and the order was then to be submitted to the Court and the same was afterwards submitted and signed and filed.

16. That although counsel for petitioner to intervene has now had over a week to make further showing, if he desired to make further showing for leave to intervene, but the said claimant has not made further showing, nor has he appeared in Court and asked for further time in which to do so; that said petitioner for leave to intervene has had notice that this foreclosure suit was filed since April, 1915, now almost a year; that said complainant has had notice of the claim of your petitioners herein since the ans-

wers of your petitioners were filed in October, 1915, over three months, and the time has been ample for counsel to have obtained information concerning the owners of its claim and other information upon which to petition to intervene; that the petitioner to intervene has as its president, H. Hobart Porter, of New York City, and that H. Hobart Porter is also the president of the Great Shoshone and Twin Falls Water Power Co., that as such the said H. Hobart Porter was aiding the complainant herein in these foreclosure proceedings, so that the foreclosure of the deed of trust and supplemental mortgage would cause a sale of all of the property of the said Great Shoshone and Twin Falls Water Power Company; and that said H. Hobart Porter and complainant were working together to obtain the property free from all claims of general creditors; but that when these creditors established prior liens to \$45,000.00 worth of personal property, then complainants and the petitioner to intervene, seeing that all the creditors had not been wiped out as complainant and petitioner to intervene had planned, became, suddenly, ostensibly opposed to each other, and the American Water Works and Electric Company petitions for leave to intervene, not to set up a claim for a prior lien to the mortgage lien and your petitioner have done, but to try to come into the payment of prior lien claims, while admitting that such claimant is only a general creditor and has never taken any action against the lien of the mortgage to make the claim a lien claim.

17. That the expenses of the sale on foreclosure herein were \$595.20; and the allowance for the services of the master in making such sale was \$250.00; that your petitioners are informed and believe that there are sufficient funds in the receiver's hands in the suit wherein Guy I. Towle is plaintiff and said power company is defendant to pay the expenses of said suit.

18. That the claims of your petitioners amount to the aggregate sum of \$40,203.16, together with the interest thereon at the rate of 7% per annum from the 6th day of December, 1915, and that there is approximately \$24,000 on hand in possession of the special master subject to the order of this Court, for the payment of the claims of your petitioners, and that according to the decree herein and the order of confirmation of the sale herein, the Court should order paid into the hands of the special master the further sum of \$21,000, in order that the prior liens of your petitioners may be satisfied and discharged under the terms of said decree.

*Wherefore*, your petitioners pray for an order

(a) Directing the purchaser the Electric Investment Company to pay into the hands of the master the sum of \$21,000.00 in cash, within 15 days from the date of the order.

(b) That said order shall direct the special master to apply forthwith the said \$24,000.00 now in the hands of the special master upon the payment of the prior liens of your four petitioners herein pro rata.

(c) That said order shall direct the special master to pay the balance of the prior liens of your petitioners together with all the interest due thereon down to the date of payment, immediately upon the said sum of \$21,000.00 in cash being paid into the hands of the special master as provided in said order.

(d) That if any balance still remains in the hands of the special master, that the same may be held subject to the further order of this Court.

(e) And for general relief.

J. H. WISE,  
KARL PAINE,  
ALFRED A. FRASER and  
MARTIN & CAMERON,  
Solicitors for Petitioners.

(Duly verified.)

PARIS MARTIN, of Counsel.

Endorsed: Filed Feb'y 22, 1916.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

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(Title of Court and Cause.)

ORDER TO MASTER TO PAY PRIOR LIEN  
CLAIMS OF PETITIONERS.

*THE APPLICATION* of L. M. Plumer and E. B. Scull as executors of the estate of L. L. McClelland, deceased, Guy I. Towle, Jake M. Shank and Carl J. Hahn as administrator of the estate of Harry M. King, deceased, coming on for hearing this day, upon the verified petition of the applicants and peti-



tioners, and upon the records, files and proceedings and stenographers' notes in this action, and all of the same being carefully considered by the Court and the premises being fully understood; and the records, files, proceedings and stenographers' notes and the petition showing that these applicants and petitioners for this order had obtained prior liens over and superior to the liens of the deed of trust and supplemental mortgages and which prior liens bear date of priority as of Dec. 6th, A. D. 1915; and that the aggregate amount of these prior liens is the sum of \$40,203.16, together with the interest thereon at the rate of seven per cent per annum from the 6th day of December, 1915, down to the date of payment; and that there is now in the hands of the Special Master, subject to the order of this Court, the sum of \$24,131.60; and that it will be necessary to have approximately \$20,000.00 more paid into the hands of the Special Master subject to the order of the Court in order that the prior liens of the petitioners for this order may be paid in full with interest; and it is therefore

*Ordered, adjudged and decreed:* (1) That within fifteen (15) days from the service of a copy of this order upon the Electric Investment Company, the purchaser, the said Electric Investment Company shall pay into the hands of the Special Master the sum of \$20,000.00 cash, lawful money of the United States, in addition to the amount already paid into the hands of the said Special Master by the said purchaser.

(2) That on the 6th day of March, 1916, the special master herein is hereby directed to apply the sum of \$24,131.60, now in the possession of the special master, on the prior lien claims of

Guy I. Towle, in the principal sum of . . . \$13,963.01

Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, in the principal sum of . . . . . 6,225.15

L. M. Plumer and E. B. Scull, as executors of the estate of L. L. McClelland, deceased, in the principal sum of . . . . . 15,625.00

And Jake M. Shank, in the principal sum of . . . . . 4,390.00

ratably in proportion to the principal sum of the said claims.

(3) That as special master herein, the special master is further hereby directed, that immediately upon the receipt of said further sum of \$20,000.00 herein ordered paid to said special master by the purchaser, the Electric Investment Company, that said special master shall forthwith apply said \$20,000.00 to the payment of the balance of the said prior lien claims of the above named prior lien claimants, without priority, in the amounts as above set forth together with the interest on said amounts at the rate of seven per cent per annum from the 6th day of December, 1915, down to the date of payment of the respective installments.

(4) That if any balance still remains in the hands of the special master, the special master shall

hold the same subject to the further order of this Court.

March 1, 1916.

FRANK S. DIETRICH,  
District Judge.

Endorsed: Filed March 1, 1916.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

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(Title of Court and Cause.)

ORDER.

It appearing that following the making of the order herein, dated the first day of March, 1916, directing the Electric Investment Company to pay to the Special Master within fifteen days from service of said order an additional Twenty Thousand Dollars (\$20,000) to be applied on the purchase price of the property sold under the decree herein, appeals were perfected from the provisions of said order directing the Special Master to make certain payments out of the moneys paid to him by said Electric Investment Company, and that supersedeas was granted in connection with said appeals staying the distribution or disbursement of the unsecured Creditors' Fund referred to in the decree and in said order, *it is now ordered:*

1. That the provisions of said order of March 1, 1916, directing the Electric Investment Company to pay to the Special Master within fifteen (15) days from the service of a copy of said order the sum of

Twenty Thousand Dollars (\$20,000), be vacated, annulled and set aside.

2. That the Special Master return to the Electric Investment Company forthwith any moneys paid to him by said Company pursuant to said order.

3. That no further payments on the purchase price shall be made by the purchaser to the Special Master until ordered or directed to do so by the Court as provided in the order of confirmation of sale.

Dated March 25, 1916.

FRANK S. DIETRICH,  
District Judge.

Endorsed: Filed March 25, 1916.

W. D. McReynolds, Clerk.

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(Title of Court and Cause.)

In Equity—No. 526.

AFFIDAVIT OF O. O. HAGA.

United States of America,  
District of Idaho,  
County of Ada,—ss.

*Oliver O. Haga*, being first duly sworn upon his oath, deposes and says:

I am one of the solicitors for the complainant above named and participated in the trial of the above entitled cause and am familiar with all the proceedings had and taken therein; that in the course of the trial of said cause Mr. Fraser, solicitor for the intervener Jake M. Shank, in addressing the Court in

connection with certain questions under consideration said:

MR. FRASER: "If the Court please, during the past few days I wasn't interested much and matters have come to my attention that I am not able to produce proof concerning at the present time, but in hearing that deposition read (referring to the deposition of Albert E. Smith) the party stated that these bonds were first put up as collateral security to some notes, I believe, of the Great Shoshone and Twin Falls Water Power Company, then that the National Securities Corporation purchased these bonds but they nowhere say what they paid for them. I understand that they got them for about 25 cents for each one hundred dollar bond; that is but hearsay."

The statement "for about 25 cents for each one hundred dollar bond" seemed to be an unintentional error on the part of counsel, and that he must have intended to say "\$25.00 for each one hundred dollar bond"; and, solely for the purpose of calling his attention to the fact that he had said "25 cents" when I thought he must have meant "\$25.00", I said, for the purpose of only calling his attention to the language he had used, "\$25.00", without intending thereby to make any statement or express any opinion as to what the bonds had actually sold for or as to whether they had been sold, for the deposition referred to by counsel and the proof in the case up to that time contained no reference whatever to the



bonds being pledged as collateral for notes of the Great Shoshone and Twin Falls Water Power Company.

As to the proceedings upon the application of Mr. Carter, solicitor for the Great Shoshone and Twin Falls Water Power Company, to file an answer in behalf of that Company, my recollection is very distinct as the incident seemed somewhat unusual. As I remember the proceedings, they were as follows:

On the convening of Court on the morning of October 27, 1915, (Wednesday), Mr. Carter stated to the Court that he had been out of the city for a few days and he had in his hand the answer of the Great Shoshone and Twin Falls Water Power Company to complainant's bill of complaint, and he asked leave to file it as of October 25th, whereupon the Court said in substance: "What is the answer?" And thereupon Mr. Carter read the body of the answer, as follows:

"Comes now the defendant, the Great Shoshone and Twin Falls Water Power Company, one of the defendants in the above entitled action, and answering the Bill of Complaint and the Supplemental Bill of Complaint, admits each and every allegation of said Bill of Complaint and the Supplemental Bill of Complaint as therein set forth or specified."

Thereupon the Court said in substance:

"Why do you want to file such an answer?"

Whereupon Mr. Carter replied in substance:

“I was directed to do so by the President of the Company. I have a telegram.”

Mr. Carter, failing to find the telegram, said he must have left it at the office, whereupon the Court inquired:

“Who is President of the Company?”

To which Mr. Carter replied: “H. Hobart Porter.”

Whereupon the Court stated that he would take the matter under advisement. And thereupon counsel for plaintiff announced that plaintiff rests.

The telegram referred to by Mr. Carter was not produced by him in connection with the above application, and nothing further took place in connection with the application of Mr. Carter to file the answer on behalf of the defendant Great Shoshone and Twin Falls Water Power Company.

OLIVER O. HAGA.

Subscribed and sworn to before me this 12th day of April, 1916.

(Seal)

EDNA L. HICE,

Notary Public.

Endorsed: Filed April 12, 1916.

W. D. McReynolds, Clerk.

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(Title of Court and Cause.)

In Equity—No. 526.

PETITION FOR APPEAL.

The above named complainant conceiving itself aggrieved by the decree made and entered on the 6th

day of December, 1915, in the above entitled cause and by the order made in said cause on the first day of March, 1916, directing the Special Master named in said decree to pay out of the fund designated in said decree as the "Unsecured Creditors' Fund", Thirteen Thousand Nine Hundred Sixty-three and 1/100 Dollars (\$13,963.01) to the defendant Guy I. Towle, Six Thousand Two Hundred and Twenty-five and 15/100 Dollars (\$6,225.15) to the defendant Carl J. Hahn as administrator of the estate of Harry M. King, deceased, Fifteen Thousand Six Hundred Twenty-five Dollars (\$15,625.00) to the interveners L. M. Plumer and E. B. Scull as executors of the estate of L. L. McClelland, deceased, and Four Thousand Three Hundred and Ninety Dollars (\$4,390.00) to the intervener Jake M. Shank, does hereby appeal from said decree insofar as said decree provides that your petitioner's deeds of trust or mortgages described in said decree are not a first and prior lien upon all the personal property, assets, rights and franchises of the defendant Great Shoshone and Twin Falls Water Power Company, and insofar as said decree orders or directs that the defendants Guy I. Towle and Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, and the interveners L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, and Jake M. Shank, have a superior claim or lien to certain personal property of the defendant Great Shoshone and Twin Falls Water Power Company, and insofar as said decree orders and directs that certain sums shall be

paid to said defendants and interveners; and your petitioner also appeals from that certain order made and entered in the above entitled cause on the 1st day of March, 1916, ordering and directing the Special Master appointed by said decree to pay to the said defendants and interveners the following sums and amounts, to-wit: To the said Guy I. Towle, \$13,-963.01; to the said Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, \$6,225.15; to the interveners L. M. Plumer and E. B. Scull as executors of the estate of L. L. McClelland, deceased, \$15,625.00; and to the intervener Jake M. Shank, \$4,390.00, for the reasons specified in the assignment of errors which is filed herewith; and your petitioner prays that this appeal may be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree and order were based, duly authenticated may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and your petitioner claims the benefit of and does not appeal from the provisions of said decree to which exceptions have not been taken in the assignment of errors filed herewith.

And your petitioner, desiring to supersede the execution of the said order made and entered on March 1, 1916, and the provisions of said decree directing that certain payments may be made out of the Unsecured Creditors' Fund to certain creditors of the defendant Great Shoshone and Twin Falls Water Power Company, tenders bond in such amount as

the Court may require for such purpose, and prays that with the allowance of the appeal a supersedeas may be issued.

Dated this 11th day of March, 1916.

MURRAY, PRENTICE & HOWLAND,  
RICHARDS & HAGA,

Solicitors for Petitioner.

ORDER ALLOWING APPEAL.

And now, to-wit, on the 11th day of March, 1916, IT IS ORDERED that the petition be granted and the appeal be allowed as prayed for, the same to operate as a supersedeas upon the petitioner filing a bond in the sum of \$3,000.00, with sufficient sureties, to be conditioned as required by law.

FRANK S. DIETRICH,  
District Judge.

Endorsed: Filed March 11, 1916.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

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(Title of Court and Cause.)

ASSIGNMENT OF ERRORS.

*And now comes* the complainant, The Equitable Trust Company of New York, Trustee, by its solicitors, and having presented an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from certain provisions of the decree made and entered in the above entitled cause on the 6th day of December, 1915, and from an order made therein on the 1st day of March, 1916, directing the Special Master to make certain payments out of what is designated



in the decree as the "Unsecured Creditors' Fund", says that said provisions of the decree and the said order and the decision of the Court are erroneous and unjust to complainant, and particularly in this:

1. Because the Court erred in adjudging and decreeing that the lien of complainant under the deed of trust and indentures of mortgage foreclosed in said cause was subject and subordinate to the claims of the defendants Guy I. Towle and Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, and to the claims of the said interveners L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, and Jake M. Shank as to certain articles of personalty not forming a constituent part of or necessary for the maintenance, repair and operation of the hydro-electric generating, transmitting and distributing system of the Great Shoshone and Twin Falls Water Power Company.

2. Because the Court erred in not holding, adjudging and decreeing the said Guy I. Towle, Carl J. Hahn, administrator as aforesaid, L. M. Plumer and E. B. Scull, executors as aforesaid, and Jake M. Shank had no lien or claim upon any of the assets, property or rights of the defendant Great Shoshone and Twin Falls Water Power Company superior to the lien, claims and demands of complainant.

3. Because the Court erred in holding, adjudging and decreeing that the said defendants and interveners, or any of them, were entitled to contest for any reason the priority or dignity of the lien created by the deed of trust and mortgages sought to be fore-

closed in said action, upon or against the personal property, rights and assets of the defendant Great Shoshone and Twin Falls Water Power Company.

4. Because the Court erred in adjudging, decreeing, holding and deciding that there was due the defendant Guy I. Towle from the Great Shoshone and Twin Falls Water Power Company the sum of Thirteen Thousand Nine Hundred Sixty-three and 1/100 Dollars (\$13,963.01), and the defendant Carl J. Hahn as administrator of the estate of Harry M. King, deceased, the sum of Six Thousand Two Hundred and Twenty-five and 15/100 Dollars (\$6,225.15), and the interveners L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, the sum of Fifteen Thousand Six Hundred and Twenty-five Dollars (\$15,625.00), and the intervener Jake M. Shank the sum of Four Thousand Three Hundred and Ninety Dollars (\$4,390.00), or any other sum.

5. Because the Court erred in ordering, adjudging and decreeing that the Special Master appointed by said decree should pay to the defendants and interveners above mentioned the respective sums above set forth, with interest thereon out of what is denominated in said decree as the "Unsecured Creditors' Fund", or out of any other fund or proceeds from the sale of property, rights or assets of the defendant Great Shoshone and Twin Falls Water Power Company, before the amount due complainant from said defendant had been fully paid, satisfied and discharged.

6. Because the Court erred in not holding, adjudging and decreeing that if the deed of trust and mortgages sought to be foreclosed in this cause were not a first and prior lien upon all the personalty and other property of the Great Shoshone and Twin Falls Water Power Company, the proceeds of the property not subject to such lien should be paid to the Receiver of said defendant for distribution and administration in the general creditors' suit in which such Receiver had been appointed, equitably between complainant and other creditors of said defendant Great Shoshone and Twin Falls Water Power Company.

7. Because the Court erred in entering an order on or about the 23rd day of October, 1915, permitting the interveners L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, to intervene and be made parties defendant in this cause.

8. Because the Court erred in overruling and denying the motion of this complainant to dismiss the petition of said L. M. Plumer and E. B. Scull, executors as aforesaid, to intervene and be made parties defendant in said cause and to vacate and set aside the order so made, as aforesaid, on or about the 23rd day of October, 1915, permitting said interveners to intervene and be made parties defendant herein.

9. Because the Court erred in overruling and denying complainant's motion to strike out what is denominated a joint answer filed on or about the 23rd day of October, 1915, in this cause by the said interveners L. M. Plumer and E. B. Scull, executors as aforesaid.

10. Because the Court erred in denying and overruling the motion of this complainant to strike the answer of the defendant Guy I. Towle filed herein on or about the 23rd day of October, 1915.

11. Because the Court erred in denying and overruling the motion of complainant to set aside an order made *ex parte* herein on or about the 25th day of October, 1915, allowing Jake M. Shank to intervene and be made a party defendant in this cause.

12. Because the Court erred in denying and overruling the motion of complainant to dismiss the petition in intervention filed by the said Jake M. Shank in this cause.

13. Because the Court erred in permitting the said Jake M. Shank to intervene and be made a party defendant in said cause.

14. Because the Court erred in denying and overruling the motion of complainant to strike out what is denominated an answer filed for or on behalf of said Jake M. Shank on or about the said 25th day of October, 1915.

15. Because the Court erred in not entering judgment in favor of complainant for the full amount of the bonds issued and outstanding, to-wit, \$2,230,000.00, with interest thereon from the 1st day of May, 1914, at the rate of five per cent per annum.

*Wherefore*, complainant prays that the decree herein be modified so as to provide that complainant's deed of trust and supplemental mortgages sought to be foreclosed in this cause are a lien upon

all the property, real, personal and mixed, rights and assets of the defendant Great Shoshone and Twin Falls Water Power Company, prior and superior to any and all liens, claims and demands of the said defendants and interveners; and so that none of the proceeds from the sale of such property, rights and assets shall be paid to the defendants and interveners, or any of them, until all the claims and demands of complainant under said deed of trust and supplemental mortgages have been fully paid, satisfied and discharged; and that the order made and entered herein on the 1st day of March, 1916, be vacated and set aside.

Dated this 11th day of March, 1916.

MURRAY, PRENTICE & HOWLAND,  
RICHARDS & HAGA,

Solicitors for Complainant, Equitable  
Trust Company of New York, Trustee.

Endorsed: Filed March 11, 1916.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

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(Title of Court and Cause.)

In Equity—No. 526.

BOND ON APPEAL.

*Know all men by these presents,* That we, The Equitable Trust Company of New York, a corporation organized under the laws of the State of New York, as principal, and the American Surety Company of New York, a corporation organized under



the laws of the State of New York, as surety, are held and firmly bound unto the defendants Guy I. Towle and Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, and the interveners L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, and Jake M. Shank, and the other defendants above named, as their respective interests may appear under the decree entered in said cause on the 6th day of December, 1915, and under the order made and entered on the 1st day of March, 1916, and hereinafter mentioned, in the penal sum of Three Thousand Dollars (\$3,000.00), to be paid to the said defendants and interveners as their respective interests may appear, and to their and each of their executors, administrators, successors or assigns, not exceeding, however, in the aggregate the said sum of \$3,000.00, to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this eleventh day of March, in the year of our Lord, One Thousand Nine Hundred and Sixteen.

The condition of this obligation is such, that:

*Whereas*, the above named The Equitable Trust Company of New York, the said principal, as Trustee, has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from a decree made and entered in said cause on the 6th day of December, 1915, and from a certain order made in said cause on the 1st day of March, 1916,

by the United States District Court for the District of Idaho, Southern Division;

*Now, therefore*, if the above named principal, The Equitable Trust Company of New York, shall prosecute its said appeal to effect, and, if it fail to make its plea good, shall answer all damages and costs, then the above obligation to be void, otherwise the same shall be and remain in full force and virtue.

*In witness whereof*, the said principal has caused its name to be hereunto subscribed by its duly authorized solicitors, and the said surety has caused its name to be hereunto subscribed by its duly authorized officers and its corporate seal affixed, the day and year first above written.

THE EQUITABLE TRUST COMPANY OF  
NEW YORK, AS TRUSTEE.

By O. O. HAGA,

One of its Solicitors.

THE AMERICAN SURETY COMPANY OF  
NEW YORK.

By BRADLEY SHEPPARD,

Resident Vice-President.

Attest:

OLIVER O. HAGA,

Resident Assistant Secretary.

The foregoing bond is hereby approved to operate as a supersedeas, and all orders heretofore made relative to the payment or disbursement of the Unsecured Creditors' Fund mentioned in the decree herein and the provisions of the decree relative to disbursement of such fund, are hereby stayed to the end

that such fund may remain intact until the determination of the appeal.

Dated this 11th day of March, 1916.

FRANK S. DIETRICH,  
District Judge.

Endorsed: Filed March 14, 1916.

W. D. McReynolds, Clerk.

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(Title of Court and Cause.)

PRAECIPE FOR RECORD ON APPEAL.

*To the Clerk of the above-entitled Court:*

You will please prepare the record on the appeal of the complainant The Equitable Trust Company of New York, taken in the above entitled cause from the decree entered therein on December 6, 1915, and order made pursuant thereto on March 1, 1916. Such record is to consist of the following:

1. Bill of Complaint, including those portions of Exhibits "A", "B" and "C" as hereinafter noted.
2. Supplemental Bill of Complaint.
3. That portion of the Amendments to Bill of Complaint as hereinafter noted.
4. Appearance of Receiver.
5. Answer of Receiver.
6. Appearance of Great Shoshone and Twin Falls Water Power Company.
7. Answer of Great Shoshone and Twin Falls Water Power Company.
8. Answer of Carl J. Hahn, and Exhibit.
9. Reply of The Equitable Trust Company of New York to Answer of Carl J. Hahn.

10. Answer of Guy I. Towle.
11. Motion of The Equitable Trust Company to strike Answer of Guy I. Towle.
12. Petition of L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, to intervene.
13. Order allowing L. M. Plumer and E. B. Scull, executors aforesaid, to intervene.
14. Answer of L. M. Plumer and E. B. Scull, executors aforesaid.
15. Motion of The Equitable Trust Company of New York to vacate order allowing L. M. Plumer and E. B. Scull to intervene and to dismiss their petition and answer.
16. Petition of Jake M. Shank to intervene.
17. Order allowing Jake M. Shank to intervene
18. Answer of Jake M. Shank.
19. Motion of The Equitable Trust Company to dismiss answer of Jake M. Shank.
20. Statement of evidence and order settling statement.
21. Memorandum decision in reference to bonds and personalty.
22. Stipulation relative to selling property as an entirety.
23. Decree of December 6, 1915.
24. Stipulation relative to value of personalty.
25. Order of Court relative to apportioning proceeds.
26. Notice of confirmation of sale.
27. Motion of confirmation of sale.
28. Order of confirmation of sale.

29. Notice of appearance of the Electric Investment Company.

30. Petition for order to Special Master to pay prior liens.

31. Order relative to Master paying prior liens dated March 1, 1916.

32. Order annulling portion of order of March 1, 1916.

33. Affidavit of O. O. Haga.

34. All papers in connection with this appeal.

Petition of The Equitable Trust Company on appeal.

Order allowing appeal of The Equitable Trust Company.

Assignment of Errors, Equitable Trust Company on appeal.

Citation of Equitable Trust Company on appeal.

Bond of Equitable Trust Company on appeal.

In preparing the above record, you will please omit the title to all pleadings, except the first, but in lieu thereof insert the words, "Title of Court and Cause", to be followed by the name of the pleading or instrument. You will also please omit the verification to all pleadings, but in lieu thereof, wherever the pleadings are verified, the words, "Duly verified".

In reference to Exhibit "A" of the Bill of Complaint above named, you will please omit the following, commencing at the middle of page 36 and ending near the top of page 42, and in lieu thereof insert the words: "There is here omitted a specific descrip-



tion of certain property included in the Amendments to the Bill of Complaint." You will also omit, commencing at the middle of page 46 and ending near the top of page 104, and in lieu thereof insert the words: "There are here omitted certain provisions relative to covenants, certification, registration and exchange of bonds, sub-companies, and management of collateral and pledged bonds." You will also please omit the provisions, commencing at about the middle of page 109 and ending about the middle of page 113. You will also please omit, commencing near the middle of page 116 and ending near the middle of page 147, and in lieu of the last omission insert: "There are here omitted certain provisions as to waiver of individual liability, redemption of bonds, sub-companies, release of property, and provisions as to bonds and trustees."

In reference to Exhibit "B" attached to the Bill of Complaint, you will please omit the whole thereof and in lieu insert the following words: "This is an indenture dated June 21, 1911, made by the Great Shoshone and Twin Falls Water Power Company to The Trust Company of America and James D. O'Neil, Trustees, conveying certain specific real property, described in complainant's Amendments to its Bill of Complaint on file herein, pursuant to the provisions of and upon the trusts and under the provisions set forth in the Mortgage or Deed of Trust made by the Great Shoshone and Twin Falls Water Power Company to The Trust Company of America and James D. O'Neil, Trustees, dated May 1, 1910, identical with the copy thereof attached to the Bill of

Complaint of the complainant herein and marked Exhibit 'A'. Signed by R. L. Kester, Vice-President, and W. B. McCain, Secretary of Great Shoshone and Twin Falls Water Power Company, and sealed with the seal of said company, and duly acknowledged."

In lieu of Exhibit "C" you will please insert: "Exhibit C". "This is a Supplemental Mortgage dated April 7, 1913, made by the Great Shoshone and Twin Falls Water Power Co. to The Equitable Trust Co. of New York and James D. O'Neil, as Trustees, conveying certain specific property, described in the complainant's Amendments to its Bill of Complaint on file herein, pursuant to the provisions of and upon the trusts and under the provisions set forth in the Mortgage or Deed of Trust dated May 1st, 1910, from the Great Shoshone and Twin Falls Water Power Company to The Trust Company of America and James D. O'Neil, as Trustees, identical with the copy thereof attached to the Bill of Complaint herein and marked 'Exhibit A'. Signed, R. L. Kester, Vice-President, W. B. McCain, Secretary, Great Shoshone and Twin Falls Water Power Company, and sealed with the seal of said Company, and duly acknowledged."

In reference to the Amendments to the Bill of Complaint, you will please omit commencing at the top of page three and ending at the bottom of page 39, and insert in lieu thereof the following: "There is omitted here a specific description of power sites, stations, sub-stations, other real estate, buildings, transmission lines, franchises, water permits and

rights, all of which is also included in the general description that follows.”

You will please include as part of this record, this praecipe, together with all signatures thereto.

In reference to instrument numbered twenty-three, being the Decree of December 6th, 1915, you will please omit all the descriptive matter, commencing on page three thereof and ending at the top of page twenty-seven, inserting in the lieu thereof the following words: “There is here omitted a specific description of power sites, stations, sub-stations, other lands, buildings, transmission lines, franchises, water permits and rights, as set forth in the Amendments to the Bill of Complaint of the complainant herein, and followed by the general description in the following paragraph.”

You will also please omit the word “other” in the first line of the last paragraph of the Amendments to the Bill of Complaint on file herein.

In reference to the answer of Jake M. Shank, you will please omit the paragraphs after the words “this defendant says” from the first to the nineteenth paragraph inclusive and from the twenty-third paragraph to the signatures of Jake M. Shank and his attorney, and in lieu thereof insert the words: “The paragraphs here omitted are identical with the paragraphs in the joint answer of L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, set forth in this record, from paragraph one to paragraph nineteen inclusive and from paragraph twenty-three to the signatures of said L. M. Plumer and E. B. Scull, excepting that where the

terms defendants or correlative plurals are used, the same appear in the singular in this answer”.

In reference to the answer of Guy I. Towle, you will please omit from paragraph one commencing at the third line of the second page, to the paragraph numbered nineteen inclusive, and from paragraph twenty-three to the signatures of Guy I. Towle and his attorneys, and in lieu thereof insert the words, “The paragraphs omitted here are identical with the paragraphs in the joint answer of L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, set forth in this record, from paragraph one to paragraph nineteen inclusive and from paragraph twenty-three to the signatures of the said L. M. Plumer and E. B. Scull, and their attorneys”.

RICHARDS & HAGA,

Solicitors for The Equitable Trust Company of New York.

We waive our right to file praecipes, and join in the above praecipe.

ALFRED A. FRASER,

By MARTIN & CAMERON,

Solicitors for Jake M. Shank.

MARTIN & CAMERON,

Solicitors for L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased.

KARL PAINE,

Solicitor for Guy I. Towle.

JAMES H. WISE,

By MARTIN & CAMERON,

Solicitors for Carl J. Hahn.

Endorsed: Filed April 19, 1916.

W. D. McReynolds, Clerk.

CITATION.

United States of America,—ss.

To Great Shoshone and Twin Falls Water Power Company, a corporation, William T. Wallace, as Receiver of Great Shoshone and Twin Falls Water Power Company, Guy I. Towle, and Carl J. Hahn, administrator of the estate of Harry M. King, deceased, defendants, and L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, Jake M. Shank, and American Water Works and Electric Company, a corporation, interveners, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco in the State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the District of Idaho, Southern Division, wherein Equitable Trust Company of New York, as sole Trustee under the deed of trust made by Great Shoshone and Twin Falls Water Power Company dated May 1st, 1910, and supplemental mortgages dated June 21st, 1911, and April 7th, 1913, is appellant, and Great Shoshone and Twin Falls Water Power Company, a corporation, William T. Wallace, as Receiver of Great Shoshone and Twin Falls Water Power Company, Guy I. Towle, Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, L. M. Plumer and E. B. Scull, ex-



cutors of the estate of L. L. McClelland, deceased, Jake M. Shank, and American Water Works and Electric Company are respondents, to show cause, if any there be, why the decree and order in said appeal mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

*Witness*, the Honorable Frank S. Dietrich, United States District Judge for the District of Idaho, this 14th day of March, 1916, and of the Independence of the United States the one hundred and fortieth year.

FRANK S. DIETRICH,

(Seal)

District Judge.

Attest:

W. D. McREYNOLDS, Clerk.

Service of the foregoing Citation and receipt of copy thereof admitted this 15th day of March, 1916.

P. B. CARTER,

Solicitor for Great Shoshone and Twin Falls  
Water Power Company.

S. H. HAYS,

Solicitor for William T. Wallace, Receiver  
of Great Shoshone and Twin Falls Wa-  
ter Power Company.

KARL PAINE,

Solicitor for Guy I. Towle.

JAMES H. WISE,

By MARTIN & CAMERON,

Solicitor for Carl J. Hahn, Administrator  
of the Estate of Harry M. King, de-  
ceased.

MARTIN & CAMERON,  
Solicitors for L. M. Plumer and E. B.  
Scull, Executors of the Estate of J. J.  
McClelland, Deceased.

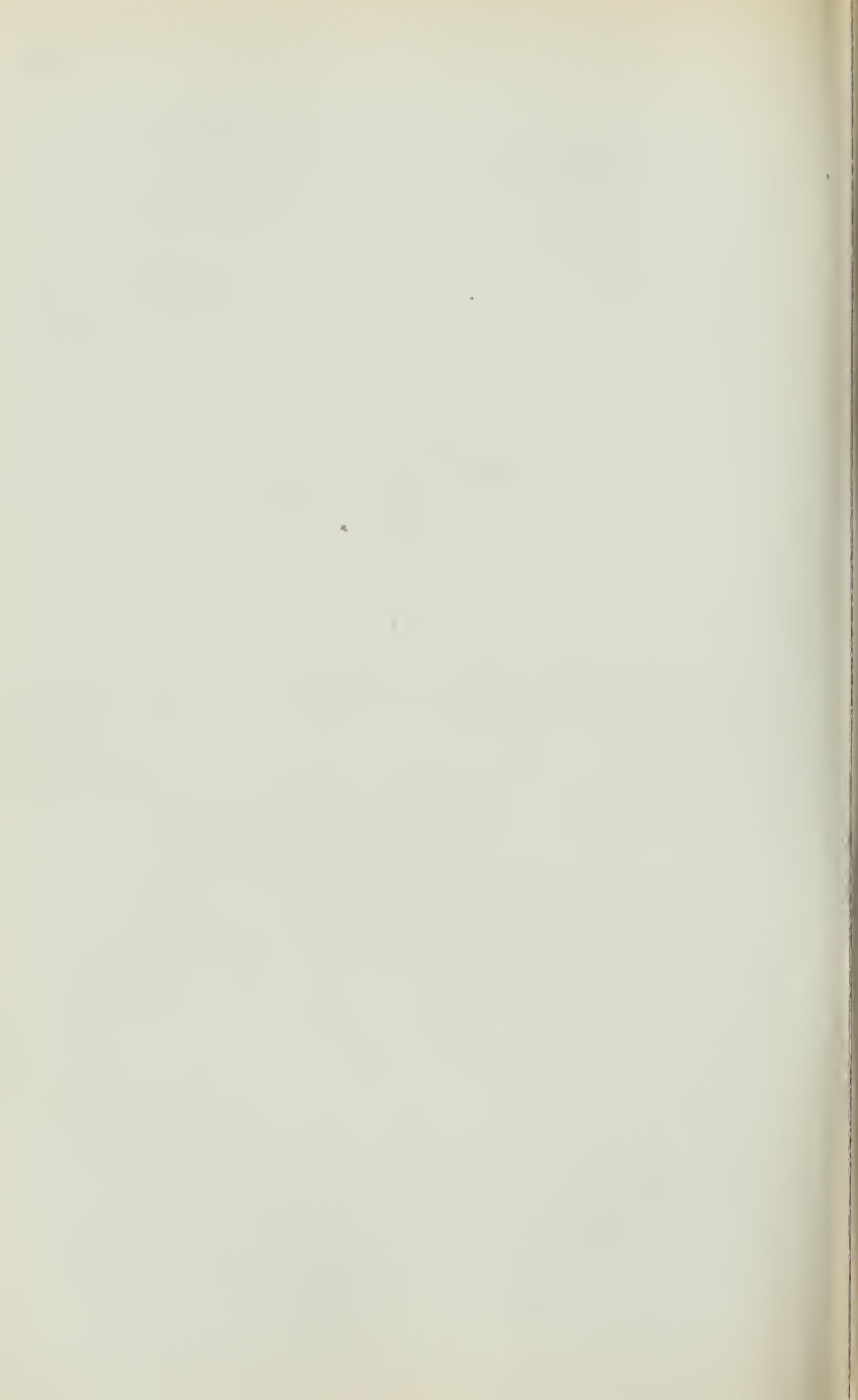
ALFRED A. FRASER,  
Solicitor for Jake M. Shank.

WYMAN & WYMAN,  
Solicitors for American Water Works and  
Electric Company.

Endorsed: Filed March 22, 1916.

W. D. McReynolds, Clerk.

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*In the District Court of the United States for the  
District of Idaho, Southern Division.*

THE EQUITABLE TRUST COMPANY OF NEW  
YORK, as sole Trustee under a Deed of Trust  
made by Great Shoshone and Twin Falls Water  
Power Company, dated May 1, 1910, and Supple-  
mental Mortgages dated June 21, 1911, and April  
7, 1913, *Complainant,*

vs.

GREAT SHOSHONE AND TWIN FALLS WAT-  
ER POWER COMPANY, a corporation, WIL-  
LIAM T. WALLACE as Receiver of Great Sho-  
shone and Twin Falls Water Power Company,  
GUY I. TOWLE, and CARL J. HAHN as Admin-  
istrator of the estate of Harry M. King, deceased,  
*Defendants.*

L. M. PLUMER and E. B. SCULL, Executors of  
the estate of L. L. McClelland, deceased, and  
JAKE M. SHANK, *Interveners,*

and

AMERICAN WATER WORKS AND ELECTRIC  
COMPANY, a Corporation,

*Intervener.*

In Equity—No. 526.

STATEMENT ON HEARING OF PETITION OF  
AMERICAN WATER WORKS AND ELEC-  
TRIC COMPANY TO INTERVENE.

Be it remembered that on the coming in of the  
Court at ten o'clock on the morning of the 14th day  
of February, 1916, the American Water Works and  
Electric Company presented to the Court its petition

to intervene and be made a party and filed its complaint in intervention in this cause, which petition is in words and figures as follows:

(Title of Court and Cause.)

PETITION OF THE AMERICAN WATER WORKS AND ELECTRIC COMPANY TO INTERVENE AND BE MADE PARTY-DEFENDANT.

*To the Honorable, the Judge of the District Court of the United States, for the District of Idaho, Southern Division.*

The petition of American Water Works and Electric Company a corporation, respectfully shows:

I.

That your petitioner now and during all the times hereinafter mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Virginia.

II.

That heretofore Guy I. Towle brought in this Court a suit in the nature of a general creditors' suit against the Great Shoshone and Twin Falls Water Power Company which is now pending; that thereupon a Receiver was duly appointed therein who under the directions of this Court took and still retains possession of the assets of the Great Shoshone and Twin Falls Water Power Company.

III.

That thereafter notice was published and given by the said Receiver, acting under the direction of the



Court, requiring all creditors of said defendant to file proof of their respective claims within a time fixed in said notice; that pursuant thereto your petitioner and other creditors within such period presented their several claims to the Receiver and filed them in the manner and form as required by said notice; that the claim of your petitioner is just and no objection has been filed against the allowance of the same;

#### IV.

That after the bringing of the said suit hereinbefore referred to and the appointment of a Receiver therein, suit was brought for the foreclosure of a mortgage given by the said Great Shoshone and Twin Falls Water Power Company upon all of its properties and such proceedings were thereafter had, that the said mortgage was foreclosed and the said property of said defendant was under the order of this Court sold by a Master; that notice of motion for the confirmation of such sale has been given and hearing thereon is now set for Feb'y 14, 1916; that, so far as your petitioner knows, there are no objections to such confirmation except such as may be involved in the matters set forth in the petition and the Bill in Intervention herewith presented.

#### V.

That your petitioner is interested in the said property and in the proceeds thereof in common with all other general creditors of the Great Shoshone and Twin Falls Water Power Company; That the said

proceeds are about to be paid by the purchaser at such sale to the Master appointed by this Court, to conduct the same, and by such Master such proceeds are about to be distributed to a small number of said general creditors hereinbefore referred to and to the exclusion of your petitioner and the greater part of such general creditors; That the particular facts with respect to the said matters hereinbefore referred to are more fully set forth in the bill of intervention herewith presented.

Your petitioner therefore prays that it may be permitted to intervene in said action and to file its said bill of intervention to the end that its rights and those of all other general creditors of said Great Shoshone & Twin Falls Water Power Company may be protected and preserved and that the said fund hereinbefore referred to be not distributed or otherwise disposed of until after the hearing upon the said bill in intervention, and that it then be paid to the Receiver hereinbefore mentioned for distribution to the general creditors of said Great Shoshone and Twin Falls Water Power Company.

WYMAN & WYMAN,  
Solicitors for American Water Works and  
Electric Company.

FRANK T. WYMAN,  
of Counsel.

(Duly verified.)

The complaint in intervention referred to and submitted to the Court is in words and figures as follows:

(Title of Court and Cause.)

In Equity—No. 526.

COMPLAINT IN INTERVENTION OF AMERICAN WATER WORKS AND ELECTRIC COMPANY.

*To the Honorable, the Judge of the District Court of the United States for the District of Idaho, Southern Division:*

The American Water Works and Electric Company, a corporation duly organized under the laws of the State of Virginia and a resident and citizen of said State, files its Complaint in Intervention against Guy I. Towle, Carl J. Hahn as administrator of the estate of Harry M. King, deceased, defendants in said cause, and L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, and Jake M. Shank, interveners in said cause.

And thereupon your orator complains and says:

I.

That heretofore, to-wit, on the 2nd day of November, A. D. 1914, the said Guy I. Towle on behalf of himself and all other creditors of the said Great Shoshone and Twin Falls Water Power Company (hereinafter called the Company), commenced in this Court a general creditors' suit against said Power Company, being Equity Cause No. 509, which said action is still pending in this Court. That in his bill of complaint in said action the said Guy I. Towle alleged and showed that said Power Company was indebted to him in the sum of \$12,857.29, with interest thereon, and that said Power Company was also

indebted to a large number of other persons, partnerships and corporations, in an amount far in excess of the reasonable value of its assets, and that said Power Company was insolvent and unable to meet its obligations, and that in order to protect the rights of the creditors of said Power Company and to prevent any of said creditors obtaining an unfair or unconscionable advantage or preference over other creditors by attachment, or otherwise, a receiver should be appointed of all the property, rights and assets of said corporation to take charge of and preserve the property of said Power Company and continue the operation thereof for the benefit of its creditors; and said Towle alleged such other facts and prayed for such other relief as is usual and customary in a bill of complaint in a general creditors' suit against public service corporations. For a full and particular statement of the matters set up in said bill your intervener prays leave to refer to said bill on file with the Clerk of this Court with the same force and effect as if the matters therein set forth were herein set out at large.

## II.

That thereafter and on said 2nd day of November the said Power Company entered its appearance in said cause by answer admitting all the allegations of the bill and joining in the request for the appointment of a receiver, and thereupon the said William T. Wallace was on said 2nd day of November, 1914, duly appointed by this Court receiver of all the property, real, personal and mixed, equities, rights and

franchises of said corporation, and immediately qualified as such receiver by giving the bond and taking the oath required, and thereupon took possession, charge and control of all of said property, rights and assets, and ever since has been and still is in the possession and control thereof as receiver of this Court appointed in said cause.

### III.

That in the order appointing the said William T. Wallace receiver of said Power Company, it is ordered, adjudged and decreed that all persons, firms, and corporations whatsoever, be and by said decree were restrained and enjoined from interfering with, attaching, levying upon, seizing, or in any manner whatsoever disturbing any of the properties, rights or franchises of said Power Company.

### IV.

That thereafter, to-wit, on the 4th day of May, 1915, this Honorable Court entered an order in said cause (Equity Cause No. 509) directing the receiver of said Power Company to notify all creditors of said Power Company to file their claims with said Receiver on or before the 10th day of August, 1915, and that all claims not presented for filing with the receiver or presented by intervention within said time should be barred from any participation in the assets of the receivership estate.

### V.

That thereafter and on or about the 19th day of May, 1915, the defendant, C. J. Hahn, pursuant to



the order of the Court made as aforesaid and a notice given by said receiver, filed his claim with said receiver claiming that said Power Company was indebted to him in the sum of about \$6,000.00, the exact amount thereof being to your intervener unknown.

#### VI.

That thereafter and on the 5th day of August, 1915, this intervener, American Water Works and Electric Company, filed its claim with said receiver pursuant to said order of Court and the notice given thereunder by said receiver, showing that said Power Company was indebted to this intervener in the sum of \$1,268,434.66, all of which was and is justly due from said Power Company to this intervener.

#### VII.

That thereafter and on the 10th day of August, 1915, the said L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, filed their claim with said receiver in the sum of \$20,000.00, alleged to be due from said Power Company under a note dated July 2nd, 1914, from said Power Company to the said L. L. McClelland, and said L. M. Plumer and E. B. Scull, executors as aforesaid, also filed with the Clerk of said Court a pleading denominated a cross bill of complaint generally describing the said claim and further stating therein that said executors were entitled to participate in the distribution of the assets of said Power Company and to receive their proportionate share thereof to which the then value of said claim might

entitle them; and that on the 11th day of August, 1915, said L. M. Plumer and E. B. Scull, executors as aforesaid, further filed with the Clerk of said Court their petition to intervene in said cause for the alleged purpose of setting up their said claim, to the end that they might be permitted to participate in the distribution of the assets of the receivership estate in said cause.

#### VIII.

That thereafter and on the 14th day of August, 1915, the said Jake M. Shank filed with said receiver his claim against said Power Company alleging that there was due him upwards of \$4,000.00, from said Power Company, the exact amount thereof being to this intervener unknown.

#### IX.

That thereafter and on the 16th day of October, 1915, as this intervener is informed and believes, the said L. M. Plumer and E. B. Scull, executors aforesaid, without notice to or knowledge thereof by this intervener presented their said claim to the Judge of this Court at Chambers *ex parte*, and obtained the allowance of their said claim in the sum of \$15,625.00; and the said Guy I. Towle likewise without notice to or knowledge thereof by this intervener presented *ex parte* and obtained the allowance of his claim in the sum approximately \$13,963.00; and on about the 25th day of October, 1915, the said Jake M. Shank without notice to or knowledge thereof by this intervener, presented *ex parte* his said claim and obtained the allowance thereof in the sum of approximately \$4,390.00.

## X.

That all of said claims and a large number of other claims aggregating upwards of \$4,000,000.00, the exact amount thereof being to your intervener unknown, were filed with the receiver in said cause pursuant to the order of the Court and the notice of the receiver requiring the filing of claims against the Power Company for allowance by the receiver and Court, to the end that the same might be entitled to share in the equitable distribution of the assets of such receivership estate pursuant to law and the principles of equity governing the administration and distribution of assets of insolvent debtors by Courts of Equity in suits brought by one or more creditors in behalf of themselves and all other creditors of the insolvent debtor.

## XI.

That thereafter and on the 24th day of December, 1915, this Honorable Court made and entered an order in said cause that all persons interested and who desired to contest the validity or the amount due upon any claim filed with the receiver aforesaid, should on or before the 17th day of January, 1916, file in said cause their objections thereto, and that a hearing thereon should be had on the 14th day of February, 1916, at 2 o'clock P. M.

## XII.

That on the 14th day of April, 1915, the said Equitable Trust Company of New York as sole Trustee under certain deeds of trust and mortgages given by said Power Company, commenced this action

against said Power Company and the said William T. Wallace as receiver thereof, and the said Guy I. Towle, and Carl J. Hahn as administrator of the estate of Harry M. King, deceased, for the foreclosure of certain deeds of trust and mortgages given by said Power Company and purporting to be first and prior liens upon all the property, rights and assets of said Power Company and on the earnings and income thereof, and which said mortgages and deeds of trust were given to secure the payment of certain first mortgage bonds of said Power Company alleged to be outstanding and unpaid to the amount of \$2,230,000.00, and such proceedings were had in such cause that the same was set for trial on the merits on or about the 26th day of October, 1915, the said Power Company making no defense thereto, but admitted by its answer all the allegations of the bill of complaint, as this intervener is informed and believes and so alleges the fact to be.

### XIII.

That the said L. M. Plumer and E. B. Scull, executors as aforesaid, and the said Carl J. Hahn, administrator as aforesaid, and the said Guy I. Towle, and Jake M. Shank, without notice to or knowledge thereof by this intervener or any of the other creditors of said Power Company, as your intervener is informed and believes and so alleges the fact to be, having acquired certain information relative to certain property of said Power Company upon which a lien or a preference might be acquired superior to the lien of the mortgages or deeds of trust so sought to be

foreclosed by said Equitable Trust Company, by complaint in intervention or answer in this cause alleged and showed that because the said deeds of trust and mortgages had not been executed or filed as required by the laws of the State of Idaho relative to chattel mortgages, the same did not constitute a lien or claim upon the personal property of said Power Company, but that the said interveners and defendants, to-wit, the said Guy I. Towle, Carl J. Hahn, administrator as aforesaid, Jake M. Shank, L. M. Plumer and E. B. Scull, executors as aforesaid, as general creditors of said Power Company had a superior lien or claim upon such personal property; and such proceedings were had upon the complaint in intervention and answer so filed that it was adjudged and decreed upon the issues so raised that the mortgages or deeds of trust so sought to be foreclosed by said Equitable Trust Company had not been execute dor filed as required by the chattel mortgage statutes of the State of Idaho, and that the lien or claim of said creditors as against certain personal property of said Power Company was prior and superior to the lien of said mortgages and deeds of trust; and it was adjudged and decreed in the decree of foreclosure so entered that the proceeds from the sale of such personal property should be placed by the Special Master appointed for conducting such sale in a fund known and designated in said decree as the "Unsecured Creditors' Fund", and that out of such fund said Special Master should pay to the said Guy I. Towle \$13,963.01, to the said Carl J. Hahn,



administrator as aforesaid, \$6,225.15, to the said L. M. Plumer and E. B. Scull, executors as aforesaid, \$15,625.00, to the said Jake M. Shank, \$4,390.00, with interest at 7 per cent per annum from the date of said decree, to-wit, December 6th, 1915.

#### XIV.

That such personal property has been sold by said Special Master, together with the other property of said Power Company, and the amount realized therefrom was the sum of \$45,000.00, which is the amount to be placed in said "Unsecured Creditors' Fund" to be paid out and distributed as provided in said decree and as above set forth, and the said sum of \$45,000.00 the full amount realized from the sale of the property and assets of said Power Company upon which the said deeds of trust and mortgages so sought to be foreclosed were not decreed a first and prior lien, being the amount realized from the property and assets of the Power Company available for the payment of the claims of other creditors than the said complainant; that in addition to said sum of \$45,000 this intervener is informed and believes that there is approximately \$25,000.00 in the hands of the receiver of said Power Company that may also be available for the payment of claims of general creditors, making in the aggregate approximately \$70,000.00 available for the payment of claims aggregating upwards of \$4,000,000.00; that the other property of said Power Company subject to complaint's deeds of trust and mortgages was sold for \$2,000,000.00 by the Special Master under the decree

of foreclosure, which amount was less, as this intervener is informed and believes and so alleges the fact to be, than is due the said plaintiff under said decree of foreclosure.

## XV.

That the general creditors of said Power Company will suffer a large loss as the assets available for the payment of their claims amount to only about 2 per cent of the face of said claims; that any payments made to the said Jake M. Shank, Guy I. Towle, Carl J. Hahn, administrator as aforesaid, and L. M. Plumer and E. B. Scull, executors as aforesaid, in excess of their pro rata and proportionate part of the assets available for the claims of general creditors based upon the aggregate amount of the claims of the said general creditors allowed and approved by this Honorable Court will in effect be a payment by the other general creditors to the said Jake M. Shank, Guy I. Towle, Carl J. Hahn, L. M. Plumer and E. B. Scull, and reduce accordingly the amount that can be received by or paid to other general creditors.

## XVI.

That the provisions of said decree of December 6th, 1915, giving to the said Guy I. Towle, Jake M. Shank, Carl J. Hahn, L. M. Plumer and E. B. Scull any preference or priority whatsoever over other general creditors of the Power Company or directing the Special Master to make any payments whatsoever to them, are not binding upon this intervener or other general creditors of said Power Company who

were not parties to said cause, but said provisions are as to this intervener and other general creditors void and ineffectual; that to permit such payments to be made as in said decree provided and to permit the said Guy I. Towle, Jake M. Shank, Carl J. Hahn, L. M. Plumer and E. B. Scull to receive more than their proportionate part of the fund available for the payment of general creditors of said Power Company would be unconscionable, unfair and unjust; that the said claimants who were by said decree allowed a preference as aforesaid over other general creditors had invoked the aid and jurisdiction of this Court in said general creditors suit and sought and obtained the benefit of such suit and by their acts and conduct in said cause acquiesced in and consented to the administration of the affairs of said Power Company for the benefit of all creditors and on the plan of the equitable and pro rata distribution to all creditors of all the available assets of said Power Company; that the attempt of said Guy I. Towle, Jake M. Shank, Carl J. Hahn, L. M. Plumer and E. B. Scull to obtain an advantage for themselves over other general creditors by intervention in such foreclosure suit is unfair and unjust as to other general creditors, and they should in equity and good conscience be held estopped from claiming any preference as to the fund so obtained in such foreclosure suit for the payment of their claims and designated in said decree as the "Unsecured Creditors' Fund", but such fund should be adjudged and decreed by the Court to be paid over by the Special Master to

the receiver in general creditors' suit, Equity Cause No. 509, to be there administered, paid out and distributed equitably and pro rata between all general creditors of said Power Company with such provision as may be equitable and fair for reimbursing the said Guy I. Towle, Jake M. Shank, Carl J. Hahn, L. M. Plumer and E. B. Scull, for any and all costs, expenses, outlays, and attorney fees as may have been incurred by them in such intervention and in obtaining such "Unsecured Creditors' Fund" for the benefit of the general creditors of said Power Company, and this intervener hereby offers to do equity and to pay its proportionate part of all such costs, expenses, outlays and attorneys' fees.

Wherefore, this intervener, American Water Works and Electric Company, prays:

1. That it be adjudged and decreed that the said Guy I. Towle, Carl J. Hahn, administrator as aforesaid, L. M. Plumer and E. B. Scull, executors as aforesaid, and Jake M. Shank, have not, nor has any one of them, any preference or priority over other general creditors of the Power Company as to money realized from the sale of personal property described in Paragraph II. of the decree herein, which money constitutes what was in said decree denominated the "Unsecured Creditors' Fund".

2. That the Special Master be ordered and directed to pay the money placed in said fund, after deducting the expenses and charges to be paid out of the same under the terms of said decree, to William T. Wallace, Receiver of Great Shoshone and Twin Falls

Water Power Company in Equity Cause No. 509; the same to be held and distributed by said receiver under such orders and directions as may be made in said cause.

3. And for such other relief as may be meet and proper under the circumstances, and this your inter-vener will ever pray.

AMERICAN WATERS WORKS AND  
ELECTRIC COMPANY,

By WYMAN & WYMAN, Its Solicitors.

FRANK T. WYMAN, of Counsel.

(Duly verified.)

Thereupon the Court considered the said petition and complaint in intervention and held the same insufficient and granted the said American Water Works and Electric Company additional time in which to make a further showing. No objections having been made to the claim of the American Water Works and Electric Company, which claim is hereinafter set out in full, within the time prescribed by the order of December 24, 1915, the same was on the said 14th day of February, 1916, by the Court deemed to be allowed and approved.

Thereafter on the 28th day of February, 1916, said American Water Works and Electric Company presented to the Court its amended complaint in intervention which is in words and figures as follows:



(Title of Court and Cause.)

COMPLAINT IN INTERVENTION OF AMERICAN WATER WORKS AND ELECTRIC COMPANY.

*To the Honorable, the Judge of the District Court of the United States for the District of Idaho, Southern Division:*

The American Water Works and Electric Company, a corporation duly organized under the laws of the State of Virginia, and a resident and citizen of said State, upon leave of Court first had filed its Complaint in Intervention against Guy I. Towle, Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, defendants in said cause, and L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, and Jake M. Shank, interveners in said cause.

And thereupon your orator complains and says:

I.

That heretofore, to-wit, on the 2nd day of November, A. D. 1914, the said Guy I. Towle, on behalf of himself and all other creditors of the said Great Shoshone and Twin Falls Water Power Company (hereinafter called the Company) commenced in this Court a general creditors' suit against said Power Company, being Equity Cause No. 509, which said action is still pending in this Court. That in his bill of complaint in said action the said Guy I. Towle alleged and showed that said Power Company was indebted to him in the sum of \$12,857.29, with interest thereon, and that said Power Company was also

indebted to a large number of other persons, partnerships and corporations in an amount far in excess of the reasonable value of its assets, and that said Power Company was insolvent and unable to meet its obligations, and that in order to protect the rights of the creditors of said Power Company and to prevent any of said creditors obtaining an unfair or unconscionable advantage or preference over other creditors by attachment, or otherwise, a receiver should be appointed of all the property, rights and assets of said corporation to take charge of and preserve the property of said Power Company and continue the operation thereof for the benefit of its creditors; and said Towle alleged such other facts and prayed for such other relief as is usual and customary in a bill of complaint in a general creditors' suit against public service corporations, for a full and particular statement of the matters set up in said bill your intervener prays leave to refer to said bill on file with the Clerk of this Court with the same force and effect as if the matters therein set forth were herein set out at large.

## II.

That thereafter and on said 2nd day of November, the said Power Company entered its appearance in said cause by answer admitting all the allegations of the bill and joining in the request for the appointment of a receiver, and thereupon the said William T. Wallace was on said 2nd day of November, 1914, duly appointed by this Court receiver of all the property, real, personal and mixed, equities, rights and

franchises of said corporation, and immediately qualified as such receiver by giving the bond and taking the oath required, and thereupon took possession, charge and control of all of said property, rights and assets, and ever since has been and still is in the possession and control thereof as receiver of this Court appointed in said cause.

### III.

That in the order appointing the said William T. Wallace receiver of said Power Company, it is ordered, adjudged and decreed that all persons, firms and corporations whatsoever, be and by said decree were restrained and enjoined from interfering with, attaching, levying upon, seizing, or in any manner whatsoever disturbing any of the properties, rights, or franchises of said Power Company.

### IV.

That thereafter, to-wit, on the 4th day of May, 1915, this Honorable Court entered an order in said cause (Equity Cause No. 509) directing the receiver of said Power Company to notify all creditors of said Power Company to file their claims with said Receiver on or before the 10th day of August, 1915, and that all claims not presented for filing with the receiver or presented by intervention within said time should be barred from any participation in the assets of the receivership estate.

### V.

That thereafter and on or about the 19th day of May, 1915, the defendant, C. J. Hahn, pursuant to

the order of the Court made as aforesaid and a notice given by said receiver, filed his claim with said receiver claiming that said Power Company was indebted to him in the sum of about \$6,000.00, the exact amount thereof being to your intervener unknown.

## VI.

That thereafter and on the 5th day of August, 1915, this intervener, American Water Works and Electric Company, filed its claim with said receiver pursuant to said order of Court and the notice given thereunder by said receiver, showing that said Power Company was indebted to this intervener in the sum of \$1,268,434.66, all of which is, and ever since a time prior to August 1st, 1915, has been justly due from said Power Company to this intervener.

## VII.

That thereafter and on the 10th day of August, 1915, the said L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, filed their claim with said receiver in the sum of \$20,000.00, alleged to be due from said Power Company under a note dated July 2nd, 1914, from said Power Company to the said L. L. McClelland, and said L. M. Plumer and E. B. Scull, executors as aforesaid, also filed with the Clerk of said Court a pleading denominated a cross bill of complaint generally describing the said claim and further stating therein that said executors were entitled to participate in the distribution of the assets of said Power Company

and to receive their proportionate share thereof to which the then value of said claim might entitle them; and on the 11th day of August, 1915, said L. M. Plumer and E. B. Scull, executors as aforesaid, further filed with the Clerk of this Court, their petition to intervene in said cause for the alleged purpose of setting up their said claim, to the end that they might be permitted to participate in the distribution of the assets of the receivership estate in said cause.

### VIII.

That thereafter and on the 14th day of August, 1915, the said Jake M. Shank filed with said receiver his claim against said Power Company alleging that there was due him upwards of \$4,000.00 from said Power Company, the exact amount thereof being to this intervener unknown.

### IX.

That thereafter and on the 16th day of October, 1915, as this intervener is informed and believes, the said L. M. Plumer and E. B. Scull, executors aforesaid, without notice to or knowledge thereof by this intervener presented their said claim to the Judge of this Court at Chambers, *ex parte*, and obtained the allowance of their said claim in the sum of \$15,625.00; and the said Guy I. Towle likewise without notice to or knowledge thereof by this intervener presented *ex parte* and obtained the allowance of his claim in the sum of approximately \$13,963.00; and on or about the 25th day of October, 1915, the said Jake M. Shank without notice to or knowledge



thereof by this intervener, presented *ex parte* his said claim and obtained the allowance thereof in the sum of approximately \$4,390.00.

X.

That all of said claims and a large number of other claims aggregating upwards of \$4,000,000.00, the exact amount thereof being to your intervener unknown, were filed with the receiver in said cause pursuant to the order of the Court and the notice of the receiver requiring the filing of claims against the Power Company for allowance by the receiver and Court, to the end that the same might be entitled to share in the equitable distribution of the assets of such receivership estate pursuant to law and the principles of equity governing the administration and distribution of assets of insolvent debtors by Courts of Equity in suits brought by one or more creditors in behalf of themselves and all other creditors of the insolvent debtor.

XI.

That on the 23rd day of October, 1915, the said Guy I. Towle filed an answer in this cause, setting up a claim to the personal property which it was alleged was not subject to the lien of said mortgage of the complainant and setting up a claim thereto and lien thereon by virtue of the allowance of his said claim in said Cause No. 509, and by virtue of the appointment of a receiver in said cause; and on said 23rd day of October, 1915, the said L. M. Plumer and E. B. Scull, executors aforesaid, obtained an order *ex parte* giving them leave to intervene in this

cause and to be made parties defendant with the right to file an answer or complaint in intervention, setting up a lien upon and claim to such personal property not subject to plaintiffs' mortgage, basing their said lien and right to intervene upon the appointment of a receiver for said Great Shoshone and Twin Falls Water Power Company and on the approval of their said claim as aforesaid and on the 25th day of October, 1915, the said Jake M. Shank, obtained an order *ex parte* permitting him to intervene in this cause and to file a complaint in intervention upon the same ground and for the same reasons set forth with reference to the intervention of said L. M. Plumer and E. B. Scull; that said cause came on for trial on the 25th day of October, 1915, without the knowledge of your intervener, and the trial thereof was concluded on the 27th day of October, 1915, and the cause submitted on briefs to be filed within seven days thereafter, and within a few days thereafter the Court adjourned until about the first day of December during which time Court was being held in the Central and Northern Divisions for said district; that a decision in said cause was rendered on November 17, 1915, while court was being held either in the Central or Northern Division of said district, and only the parties to the suit were notified thereof; that no further action was taken in said cause until the court again convened in Boise on or about December 6, 1915, when the decree in this cause was made and entered, and immediately thereupon the property embraced in said decree was ad-

vertised for sale by the Special Master to be sold at Twin Falls, Idaho, on January 8, 1916.

## XII.

That thereafter and on the 24th day of December, 1915, this Honorable Court made and entered an order in said cause that all persons interested and who desired to contest the validity or the amount due upon any claim filed with the Receiver aforesaid, should on or before the 17th day of January, 1916, file in said cause their objections thereto, and that a hearing thereon should be had on the 14th day of February, 1916, at 2 o'clock P. M.; that no court was held in the Southern Division for the District of Idaho, between the 30th day of December, 1915, and on or about the 10th day of February, 1916, as this intervener is informed and believes and so alleges the fact to be. Your intervener begs leave to refer to the pleadings and files and the minutes of the court in said cause No. 509 and in this cause for a more particular statement of the facts above set forth and for all purposes for which the same may be relevant or pertinent in connection with this intervention and with the same force and effect as if such pleadings, files, minutes and records were herein set forth at large.

## XIII.

That on the 14th day of April, 1915, the said Equitable Trust Company of New York as sole Trustee under certain deeds of trust and mortgages given by said Power Company, commenced this action against said Power Company and the said William

T. Wallace as receiver thereof, and the said Guy I. Towle, and Carl J. Hahn as administrator of the estate of Harry M. King, deceased, for the foreclosure of certain deeds of trust and mortgages given by said Power Company and purporting to be first and prior liens upon all the property, rights and assets of said Power Company and on the earnings and income thereof, and which said mortgages and deeds of trust were given to secure the payment of certain first mortgage bonds of said Power Company alleged to be outstanding and unpaid to the amount of \$2,230,000.00, and such proceedings were had in such cause that the same was set for trial on the merits on or about the 26th day of October, 1915, the said Power Company making no defense thereto, but admitted by its answer all the allegations of the Bill of Complaint, as this intervener is informed and believes and so alleges the fact to be.

#### XIV.

That the said L. M. Plumer and E. B. Scull, executors as aforesaid, and the said Carl J. Hahn, administrator as aforesaid, and the said Guy I. Towle, and Jake M. Shank, without notice to or knowledge thereof by this intervener or any of the other creditors of said Power Company, as your intervener is informed and believes and so alleges the fact to be, having acquired certain information relative to certain property of said Power Company upon which a lien or preference might be acquired superior to the lien of the mortgages or deeds of trust so sought to be foreclosed by said Equitable Trust Company, by

complaint in intervention or answer in this cause alleged and showed that because the said deeds of trust and mortgages had not been executed or filed as required by the laws of the State of Idaho relative to chattel mortgages, the same did not constitute a lien or claim upon the personal property of said Power Company, but that the said interveners and defendants, to-wit: the said Guy I. Towle, Carl J. Hahn, administrator as aforesaid, Jake M. Shank, L. M. Plumer and E. B. Scull, executors as aforesaid, as general creditors of said Power Company had a superior lien or claim upon such personal property and such proceedings were had upon the complaint in intervention and answer so filed that it was adjudged and decreed upon the issues so raised that the mortgages or deeds of trust so sought to be foreclosed by said Equitable Trust Company had not been executed or filed as required by the chattel mortgage statutes of the State of Idaho, and that the lien or claim of said creditors as against certain personal property of said Power Company was prior and superior to the lien of said mortgages and deeds of trust; and it was adjudged and decreed in the decree of foreclosure so entered that the proceeds from the sale of such personal property should be placed by the Special Master appointed for conducting such sale in a fund known and designated in said decree as the "Unsecured Creditors Fund", and that out of such fund said Special Master should pay to the said Guy I. Towle, \$13,963.01, to the said Carl J. Hahn, administrator as aforesaid, \$6,225.15, to the



said L. M. Plumer and E. B. Scull, executors as aforesaid, \$15,625.00, to the said Jake M. Shank, \$4,390.00, with interest at 7% per annum from the date of said decree, to-wit: December 6th, 1915.

## XV.

That such personal property has been sold by said Special Master, together with the other property of said Power Company, and the amount realized therefrom was the sum of \$45,000.00 which is the amount to be placed in said "Unsecured Creditors' Fund" to be paid out and distributed as provided in said decree and as above set forth, and the said sum of \$45,000.00 the full amount realized from the sale of the property and assets of said Power Company upon which the said deeds of trust and mortgages so sought to be foreclosed were not decreed a first and prior lien, being the amount realized from the property and assets of the Power Company available for the payment of the claims of other creditors than the said complainant; that in addition to said sum of \$45,000.00 this intervener is informed and believes that there is approximately \$25,000.00 in the hands of the receiver of said Power Company that may also be available for the payment of claims of general creditors, making in the aggregate approximately \$70,000.00 available for the payment of claims aggregating upwards of \$4,000,000.00; that the other property of said Power Company subject to complainant's deeds of trust and mortgages was sold for \$2,000,000.00 by the Special Master under the decree of foreclosure, which amount was

less, as this intervener is informed and believes and so alleges the fact to be, than is due the said plaintiff under said decree of foreclosure.

#### XVI.

That the general creditors of said Power Company will suffer a large loss as the assets available for the payment of their claims amount to only about two per cent. of the face of said claims; that any payments made to the said Jake M. Shank, Guy I. Towle, Carl J. Hahn, administrator as aforesaid, and L. M. Plumer and E. B. Scull, executors as aforesaid, in excess of their pro rata and proportionate part of the assets available for the claims of general creditors based upon the aggregate amount of the claims of the said general creditors allowed and approved by this Honorable Court will in effect be a payment by the other general creditors to the said Jake M. Shank, Guy I. Towle, Carl J. Hahn, L. M. Plumer and E. B. Scull, and reduce accordingly the amount that can be received by or paid to other general creditors.

#### XVII.

That the provisions of said decree of Dec. 6th, 1915, giving to the said Guy I. Towle, Jake M. Shank, Carl J. Hahn, L. M. Plumer and E. B. Scull any preference or priority whatsoever over other general creditors of the Power Company or directing the Special Master to make any payments whatsoever to them, are not binding upon this intervener or other general creditors of said Power Company who were not parties to said cause, but said provisions

are as to this intervener and other general creditors void and ineffectual; that to permit such payments to be made as in said decree provided and to permit the said Guy I. Towle, Jake M. Shank, Carl J. Hahn, L. M. Plumer and E. B. Scull to receive more than their proportionate part of the fund available for the payment of general creditors of said Power Company would be unconscionable, unfair and unjust; that the said claimants who were by said decree allowed a preference as aforesaid over other general creditors had invoked the aid and jurisdiction of this Court in said general creditors suit and sought and obtained the benefit of such suit and by their acts and conduct in said cause acquiesced in and consented to the administration of the affairs of said Power Company for the benefit of all creditors and on the plan of the equal and pro rata distribution to all creditors of all the available assets of said Power Company; that the attempt of said Guy I. Towle, Jake M. Shank, Carl J. Hahn, L. M. Plumer and E. B. Scull to obtain an advantage for themselves over other general creditors by intervention in such foreclosure suit is unfair and unjust as to other general creditors, and they should in equity and good conscience be held estopped from claiming any preference as to the fund so obtained in such foreclosure suit for the payment of their claims and designated in said decree as the "Unsecured Creditors' Fund", but such fund should be adjudged and decreed by the Court to be paid over by the Special Master to the Receiver in said general creditors' suit, Equity

Cause No. 509, to be there administered, paid out and distributed equitably and pro rata between all general creditors of said Power Company with such provisions as may be equitable and fair for reimbursing the said Guy I. Towle, Jake M. Shank, Carl J. Hahn, L. M. Plumer and E. B. Scull, for any and all costs, expenses, outlays and attorneys' fees as may have been incurred by them in such intervention and in obtaining such "Unsecured Creditors' Fund" for the benefit of the general creditors of said Power Company, and this intervener hereby offers to do equity and to pay its proportionate part of all such costs, expenses, outlays and attorneys fees.

#### XVIII.

That heretofore and early in the year, 1915, this intervener and National Securities Corporation entered into negotiations with respect to certain property of this intervener including its said claim against said Great Shoshone and Twin Falls Water Power Company; that in the course thereof a proposition was made by said National Securities Corporation to acquire all said property including said claim; that it was thereupon agreed between said parties that said National Securities Corporation should purchase the same but the purchase price was not agreed upon; that from time to time thereafter said parties endeavored without effect to agree upon such purchase price until some time in January, 1916. That such purchase price has not been paid; that said claim is still the property of this intervener, and that title thereto has not passed and was not

intended to pass to said National Securities Corporation or at all by virtue of said agreement or in any other manner.

WHEREFORE, this intervener, American Water Works and Electric Company prays:

1. That it be adjudged and decreed that the said Guy I. Towle, Carl J. Hahn, administrator as aforesaid, L. M. Plumer and E. B. Scull, executors as aforesaid, and Jake M. Shank, have not, nor has any one of them, any preference or priority over other general creditors of the Power Company as to money realized from the sale of personal property described in Paragraph II of the decree herein, which money constitutes what was in said decree denominated the "Unsecured Creditors' Fund".

2. That the Special Master be ordered and directed to pay the money placed in said bond, after deducting the expenses and charges to be paid out of the same under the terms of said decree, to William T. Wallace, Receiver of Great Shoshone and Twin Falls Water Power Company in Equity Cause No. 509; the same to be held and distributed by said Receiver under such orders and directions as may be made in said cause.

3. And for such other relief as may be meet and proper under circumstances, and this your intervener will ever pray.

AMERICAN WATER WORKS AND ELECTRIC  
COMPANY.

By WYMAN & WYMAN, Its Solicitors.  
Frank T. Wyman, of Counsel.



State of New York, County of New York, ss.

H. Hobart Porter, being first duly sworn according to law deposes and says; that he is the President of the American Water Works and Electric Company, that he makes this verification on behalf of said intervener, that he has read the foregoing complaint in Intervention and knows the contents thereof, and he believes the matters therein set forth to be true.

.....  
Subscribed and sworn to before me this...day of February, 1916.

....., Notary Public.  
Residing at.....

And the above and foregoing amended complaint when presented to the court on the 28th day of February, 1916, was unverified and the court stated at the hearing that the amended complaint in intervention might be used in its unverified condition in the presentation of application for leave to intervene, with the understanding that the said amended complaint in intervention should be verified by the proper officers and when so verified, might be lodged as of date the 28th day of February, 1916. This permission to hear the application of the American Water Works and Electric Company on its unverified complaint in intervention was granted to the American Water Works and Electric Company for the reason that petitioners L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, Jake M. Shank, Guy I. Towle, and Carl J. Hahn, as administrator of the estate of Harry M. King, de-

ceased, had noticed for hearing at 10:00 A. M. on the 28th day of February, 1916, their petition for an order upon the Special Master to pay the prior lien claims of these petitioners, and counsel for the American Water Works and Electric Company had asked leave of the court to present the application of the American Water Works and Electric Company on the unverified complaint in intervention in order that the two matters might come before the court on the same morning.

After argument of counsel upon the application for leave to intervent, the petition of the American Water Works and Electric Company for leave to intervene was denied, and on the same day, to-wit, the 28th day of February, 1916, the court rendered its decision, a copy of which is as follows:

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(Title of Court and Cause.)

MEMORANDUM DECISION UPON PETITION  
OF AMERICAN WATER WORKS AND ELECTRIC  
COMPANY TO INTERVENE.

Feb. 28, 1916.

Martin & Cameron, Attorneys for Interveners.

Wyman & Wyman, Attorneys for American Water Works and Electric Company, applicant to intervene.

*DIETRICH, DISTRICT JUDGE:*

The interveners to whom a prior lien was awarded by the decree present an application for an order requiring the purchaser at the sale to pay into the hands of the Special Master a sufficient additional

amount to cover their claims, and for a further order directing the Master to pay the claims in full.

On the 14th day of February, the American Water Works and Electric Company, through its counsel, Messrs. Wyman & Wyman, presented an application to intervene, for the purpose of resisting payment to the interveners, and after argument the suggestion was made from the bench that without full consideration of the rights of the applicant its petition would be denied in the form in which it was then presented, and further that the application would again be entertained upon a showing touching the diligence of the applicant, and especially touching the ownership of the claim, and the interests, direct and indirect, which parties to the litigation have and have had therein. It seems that no time was fixed for making such showing, but upon notice from the interveners that they would present the application hereinbefore referred to upon this day, it was suggested to counsel for the American Water Works and Electric Company that in order to avoid delay it might present its amended petition to intervene at the time fixed for the interveners' application, and that if the same could not be verified before such time, the verification might be made later and be considered as having been made as of this day. Accordingly the unverified amended petition has been submitted and is entertained, together with the intervenors' application. A decision was announced from the bench at the close of the argument, granting the application of the petitioners and denying

that of the American Water Works and Electric Company, and the views expressed at the former hearing and at the close of the argument today are hereinafter set forth with some amplification, in order that they may be of record.

Admittedly the interveners are entitled to the relief prayed for, unless the American Water Works and Electric Company, hereinafter called the petitioner, is entitled to intervene, and to take from them substantially all of the fruits of their litigation. It did not seek to intervene until the hour set for the confirmation of the sale, at which time but for its appearance it would have been proper to make the order for which the intervenors now pray. In view of the lateness of the application and the impression I had received in the course of the administration of the estate that there was a community of interest, if not a common ownership, as between the holder of all of the bonds and the holder of this claim, it was thought proper to require the petitioner to make a prima facie case showing that it was not guilty of laches, and that it had not been cooperating with the plaintiff in the action in resisting the relief granted to the intervenors. While in the decision today I have placed special emphasis upon another consideration, the showing made by the amended petition upon the point suggested is not very satisfactory. The petitioner might be the technical owner of the claim, and yet all of its stock might be held by the owner of the bonds, and hence I before suggested that in explaining the ownership of the claim the owner-

ship of the stock of the petitioner should also be disclosed. It appears from the record in the case that during the entire time of the pendency of the foreclosure suit all the bonds were held by the National Securities Corporation, and it now appears from the amended petition that there was some sort of an arrangement between that company and the petitioner for the purchase of this claim. In view of the record in the receivership and in this case, it is thought to be incumbent upon the petitioner, before it can ask the court to exercise a liberal discretion in its favor, fully and frankly to negative the proposition that it stood with the holders of the bonds in the attempt to defeat the intervenors in procuring the relief, whereas now it seeks to appropriate to itself substantially all that they have succeeded in wresting from the bondholders, at their own expense and peril.

But be that as it may, I have been unable to see any substantial ground on which the right of the petitioner to intervene may be predicated. When the matter was first presented to me upon the 14th of February I had the impression that while it would not be permitted to intervene to share pro rata in the decree, the intervention might be allowed for another purpose. To explain, there is a fund, the precise amount of which has not yet been determined, in the hands of the receiver in the creditors' suit, which presumably will ultimately be distributed to the unsecured creditors, including the intervenors and the petitioner,—and also the plaintiff trustee for such deficiency judgment as may be awarded to it after



applying the proceeds of the sale to the liquidation of its claim. My thought was that by paying the \$45,000.00 to the intervenors the proceeds of the sale would be diminished by that amount, and therefore the deficiency judgment would be correspondingly increased, and the aggregate of the unsecured claims entitled to share in the receivership fund would be equally increased, and thus the petitioner would receive a smaller dividend than would have been distributed to it if the intervenors had stayed out of this suit. It occurred to me that perhaps it could be properly held,—although that seemed extremely doubtful,—that a duty rested especially upon Towle, the plaintiff in that action, and possibly upon other intervenors, not to do anything even in another suit by which they would be benefited to the disadvantage of other creditors. But whether such was or was not their duty, upon reflection it now appears clear to me that the petitioner would not suffer the slightest prejudice even in this respect. Indeed it is practically conceded by counsel that the petitioner's position is precisely the same, and the share it will receive out of the funds in the hands of the receiver is precisely the same, that it would have been had the intervenors never come into the foreclosure suit. The aggregate of the claims to participate in the distribution of that fund will not be increased, because insofar as the deficiency judgment is increased the claims of these intervenors will be diminished, so that the aggregate will remain precisely the same. Even if therefore it be assumed that for some reason not

made clear the intervenors owed the petitioner the duty to take no action which would prejudicially affect its distributive share in the receivership fund, it cannot invoke the principle of equitable estoppel here as a ground for intervening, because admittedly it has suffered and will suffer no injury. The intervenors have done nothing against good conscience or to the prejudice of the petitioner in securing and appropriating to their own use the judgment in the foreclosure case. They were under no contractual obligations to the petitioner, and I am unable to perceive how it can be held that they have violated any duty or obligation in seeking payment of their claims out of a fund which in whole would have otherwise gone to the bondholders, and not at all to the unsecured creditors. The judgment is entirely the fruit of their diligence, in the exercise of which they took nothing from the petitioner. The petitioner had the same right as they to come into the suit, of the pendency of which it undoubtedly had knowledge. If it did not join hands with the plaintiff to defeat the intervenors, still, having knowledge of the pendency of the foreclosure suit, and presumably being advised of its legal rights, it chose to remain silent and inactive, thus avoiding the expense and peril of litigation, until after these intervenors have succeeded, and then, when they are about to receive the fruits of their diligence, it seeks to step in and seize the same. It intimates no reason why, though having knowledge that the plaintiff trustee was seeking to appropriate the entire assets of its debtor to the pay-

ment of the bonds, it never lifted a finger in resistance, or suggested that the receiver do so.

The record does not disclose what the real value of the property is upon which the intervenors were awarded a first lien; it may have been very much in excess of the aggregate of their claims. They entered into a stipulation with the plaintiff, agreeing upon a value which was sufficient, but only sufficient, to take care of their claims in full. Had it been known that other creditors would seek to share in such lien it is possible that a much greater value could have been established, but so far as appears the petitioner gave no notice of its intention to assert the present claim until after such stipulation had been entered into. It is further suggested that the receiver might have asserted for all creditors the rights which the court recognized in the intervenors. It is extremely doubtful, to say the least, whether the receiver could have secured a footing to assert such rights, even upon behalf of the intervenors, whose claims had been allowed in the general creditors' suit. But while the petitioner's claim had been presented, it had never been passed upon or allowed, and it may be questioned therefore whether it fell within the principle of law upon which the recognition of the intervenors' liens in the foreclosure suit was predicated. The trustee earnestly contended that before anyone could attack the validity of the chattel mortgage upon the ground relied upon by the intervenors they must show some interest in or lien upon the property; and such undoubtedly is the gen-

eral rule. How could the receiver have shown such interest in or lien upon the property in behalf of the petitioner? However that may be, upon an examination of the receiver's answer and of the proofs it will be seen that they were not sufficient to justify the court in finding or declaring any lien in favor of the petitioner or any other creditors. Proofs of the existence and status of claims were offered only by the intervenors and only touching their claims. The court had no basis upon which to declare a lien in favor of the petitioner.

And thereafter on March 1, 1916, entered the following order, in words and figures as follows:

(Title of Court and Cause.)

In Equity—No. 526.

ORDER DENYING PETITION OF THE AMERICAN WATER WORKS AND ELECTRIC COMPANY FOR LEAVE TO INTERVENE.

On this 28th day of February, 1916, in open Court, Messrs. Wyman & Wyman, solicitors for the American Water Works and Electric Company, offered for filing the petition of the American Water Works and Electric Company for leave to intervene and file its Complaint in Intervention, Messrs. Wyman & Wyman appearing in support of said petition, and Messrs. Martin & Cameron, Karl Paine, J. H. Wise and Alfred A. Fraser respectively appearing for L. M. Plumer and E. B. Scull as executors of the estate of L. L. McClelland, deceased, Guy I. Towle, Carl J. Hahn as administrator of the estate of Harry M. King, deceased, and Jake M. Shank, in opposition

thereto and the same being considered upon the records, files, reports, minutes, stenographers' notes and proceedings in this action, and the premises being fully understood by the Court;

*It is ordered*, that the petition of the American Water Works and Electric Company for leave to intervene herein and to file herein its complaint in intervention be and the same is hereby denied.

March 1, 1916.

FRANK S. DIETRICH, Judge.

And the Court in reaching its conclusion and decision considered the said petition and amended complaint in intervention and added thereto the following records, files, minutes and proceedings in this cause, which appear elsewhere in this record and are therefore not set out in full below.

1. Bill of Complaint.
2. Supplemental Bill of Complaint.
3. Amendments to Bill of Complaint.
4. Appearance of Receiver.
5. Answer of Receiver.
6. Appearance of Great Shoshone and Twin Falls Power Company.
7. Answer of Great Shoshone and Twin Falls Water Power Company.
8. Answer of Carl J. Hahn, and exhibit.
9. Reply of the Equitable Trust Company of New York to Answer of Carl J. Hahn.
10. Answer of Guy I. Towle.
11. Motion of the Equitable Trust Company of New York to strike Answer of Guy I. Towle.



12. Petition of L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, to intervene.

13. Order allowing L. M. Plumer and E. B. Scull, executors aforesaid, to intervene.

14. Answer of L. M. Plumer and E. B. Scull, executors aforesaid.

15. Motion of the Equitable Trust Company of New York to vacate order allowing L. M. Plumer and E. B. Scull to intervene and to dismiss their petition and answer.

16. Petition of Jake M. Shank to intervene.

17. Order allowing Shank to intervene.

18. Answer of Jake M. Shank.

19. Motion of The Equitable Trust Company of New York to dismiss answer of Jake M. Shank.

20. Statement of Evidence under Equity Rule 75.

21. Stipulation relative to selling property as an entirety.

22. Decree of December 6, 1915.

23. Stipulation relative to value of personalty.

24. Order of Court relative to apportioning proceeds.

25. Notice of confirmation of sale.

26. Motion of confirmation of sale.

And together with the above and foregoing the Court also considered the records, files and proceedings in the cause wherein Guy I. Towle is plaintiff and the Great Shoshone and Twin Falls Water Power Company is defendant being equity cause No. 509 pending in this Court, the material parts of which

are set out or referred to in said complaint and amended complaint in intervention and are in words and figures as follows:

1. Complaint of Guy I. Towle.

(The complaint referred to is identical with the copy thereof set out in this record entitled Complaint of Guy I. Towle, marked "Complainant's Exhibit 3".)

2. Answer of Great Shoshone and Twin Falls Water Power Company.

(The answer referred to is identical with the copy thereof set out in this record entitled Answer of Great Shoshone and Twin Falls Water Power Company, and marked "Complainant's Exhibit 5".)

3. Order of November 2, 1915, appointing William T. Wallace Receiver.

(The order referred to is identical with the copy thereof set out in this record, marked "Complainant's Exhibit 4".)

4. Claim of Carl J. Hahn.

(The claim referred to is identical with Exhibit "C" attached hereto.)

5. Claim of L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased.

(The claim referred to is identical with Exhibit "D" attached hereto.)

6. Cross-bill of Complaint of Plumer and Scull, Executors aforesaid.

(Complaint referred to is identical with Exhibit "D-A" attached hereto.)

7. Claim of American Water Works and Electric Company.

(The claim referred to is identical with Exhibit "E" attached hereto.)

8. Claim of Jake M. Shank.

(The claim referred to is identical with Exhibit "F" attached hereto.)

9. Order allowing claim of L. M. Plumer and E. B. Scull, executors aforesaid.

(The order referred to is identical with Exhibit "G" attached hereto.)

10. Order allowing claim of Jake M. Shank.

(The order referred to is identical with Exhibit "H" attached hereto.)

11. Order allowing claim of Guy I. Towle.

(Order referred to is identical with Exhibit "I" attached hereto.)

12. Order of May 4, 1915, directing Receiver to notify creditors to file claims.

(The order referred to is identical with Exhibit "K" attached hereto.)

13. Order of December 24, 1915, setting time for allowance and contesting of claims.

(The order referred to is identical with Exhibit "L" attached hereto.)

And at the same time the petition for order to Special Master to pay prior lien claims of L. M. Plumer and E. B. Scull, as executors aforesaid, was presented and read to the Court, in words and figures as follows:

(Set out in full on page 224 of this volume and

made a part hereof, and was considered by the Court in the determination of the said motion to pay prior lien claims.

That thereafter and on March 4, 1916, the American Water Works and Electric Company lodged its amended complaint in intervention with the clerk, in all respects identical with the complaint in intervention, considered by the Court on February 28th, 1916, on the application of the American Water Works and Electric Company to intervene, excepting that paragraph 18 thereof was as follows:

“XVIII.

“That heretofore and early in the year 1915, this intervener offered to sell certain property of this intervener to National Securities Corporation, including its said claim against Great Shoshone and Twin Falls Water Power Company, for a consideration thereafter to be determined, which offer was accepted by said National Securities Corporation. That thereafter efforts were made from time to time to determine the consideration so to be paid, but no such determination was reached until January 17, 1916, at which time such consideration was determined and agreed upon. That such consideration has not yet been paid. That this intervener has made no assignment of said claim, but it has retained, and still retains, title to said claim and will continue to retain title thereto until the consideration so determined has been paid in full. That said National Securities Corporation has no authority or control, through stock ownership or otherwise, over this intervener.”

And the said amended complaint, as so lodged, had at the end thereof the following verification :

“State of New York,

“County of New York,—ss.

“H. HOBART PORTER, being first duly sworn according to law, deposes and says: That he is the President of the American Water Works and Electric Company; that he makes this verification on behalf of said intervener; that he has read the foregoing complaint in intervention and knows the contents thereof, and he believes the matters therein set forth to be true.

“H. HOBART PORTER.

“Subscribed and sworn to before me this 29th day of February, 1916.

“A. G. SWAN,

“Notary Public, residing at Kings County.

Certificate filed in New York County,  
No. 216, Register No. 8390.”

(Seal)

#### ORDER SETTLING STATEMENT.

The within and foregoing is settled and allowed this 21st day of April, 1916, as the statement on the appeal of the American Water Works and Electric Company taken from those certain orders made and entered herein on the 14th day of February and the 1st day of March, 1916, denying the petition of said American Water Works and Electric Company to intervene in this cause, and order made on the 1st day of March, 1916, in this cause, and contains all of the papers and records considered by the Court in deny-



ing the said petition of the American Water Works and Electric Company, aforesaid, for leave to intervene and file its complaint in intervention of this cause.

April 21, 1916.

FRANK S. DIETRICH,  
District Judge.

Filed April 21, 1916.

W. D. McReynolds, Clerk.

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*EXHIBIT "C".*

(Title of Court and Cause.)

No. 509—In Equity.

STATEMENT OF CARL J. HAHN, ADMINISTRATOR OF THE ESTATE OF HARRY M. KING, DECEASED, FOR PRIORITY AND AS AN OPERATING EXPENSE.

Carl J. Hahn, administrator of the estate of Harry M. King, deceased, showing to the court that on the 6th day of May, 1913, Harry M. King, was an employee of said Great Shoshone and Twin Falls Water Power Company, to do and perform such work for said corporation as might be required of him, upon the pole line of said defendant in constructing and repairing of said pole line, under an uninsulated high tension power wire, charged with a dangerous and deadly current of electricity; that while said deceased, Harry M. King, was in the employ of the Great Shoshone and Twin Falls Water Power Company, and while said corporation was in the operation of and operating said plant, and while the said

deceased was in the performance of his duties for said corporation, in the operation and construction of said plant, the said corporation negligently and carelessly failed to ground the wire upon which said deceased was then working, and negligently and carelessly permitted the wire upon which the deceased was working to become fastened under a small bush or tree and to become loosened from said bush or tree and to flip up against the uninsulated light, heat and power wires of said defendant, which was charged and loaded with a dangerous and deadly current of electricity and to charge and load the wire upon which the deceased was working and holding down, by which the said Harry M. King, deceased, was severely shocked, burned and bruised, and from which the said Harry M. King died on the 6th day of May, 1913, and left surviving him his widow, Katherine King, and his minor children, Margaret King, age eight years, and Alice King, age six years, and left no other child nor descendants of deceased child.

This claimant further shows to the court that on the 29th day of October, 1913, he filed a suit in the District Court of the Fourth Judicial District of the District of Idaho, in and for the County of Twin Falls against the said Great Shoshone and Twin Falls Water Power Company for damages in the sum of \$46,480.50 for negligence and carelessness of said Great Shoshone and Twin Falls Water Power Company, which resulted in the death of Harry M. King, deceased, as aforesaid, which Great Shoshone and Twin Falls Water Power Company caused said action to be

removed to the District Court of the United States of the District of Idaho, Southern Division, where issue was joined in said court and on the 23rd day of September, 1914, said cause was duly tried in said District Court of the United States by a jury and a verdict returned thereafter in the sum of \$5590.00, together with costs and disbursements in the sum of \$174.35; a copy of which judgment is hereto attached and marked "Exhibit A" and made a part of this claim.

This claimant further shows to the court that the aforesaid judgment is a liability contracted and incurred in the operation, use and enjoyment of the franchise of said corporation, and in the use and privilege of said franchise, and is a running and operating expense of said corporation, and its franchise, and should be allowed as a priority over other claims not contracted in the general operation and running expense of said corporation.

This claimant further shows to the court that he is the duly appointed, qualified and acting administrator of the estate of Harry M. King, deceased, and was, and is now, at all times hereinbefore mentioned.

Wherefore, this claimant prays that said claim be paid and allowed as an operating expense, and that the same have priority over other claims that are not found to be contracted in the operation of said company.

JAMES H. WISE,  
Attorney for Claimant.  
Residence and Office, Twin Falls, Idaho.

State of Idaho,  
County of Twin Falls,—ss.

Carl J. Hahn, being first duly sworn upon his oath, states: That he is administrator of the estate of Harry M. King, deceased. That he had read the foregoing statement thereto and knows the contents therein, and believes the same to be true.

CARL J. HAHN.

Subscribed and sworn to before me this the 17th day of May, 1915.                      JAMES H. WISE,  
(Seal)    Notary Public.

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“EXHIBIT A.”

*In the District Court of the United States, District of Idaho, Southern Division.*

CARL J. HAHN, administrator of the estate of Harry M. King, deceased,                      Plaintiff,

vs.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a corporation,                      Defendant.

JUDGMENT ON VERDICT OF JURY IN OPEN COURT.

This action came on regularly for trial, on this the 22nd day of September, 1914, the plaintiff appearing in person and by his attorney, James H. Wise, of Twin Falls, Idaho, the defendant appearing by its attorneys, Samuel B. Hays and Pasco B. Carter. A jury of twelve persons was regularly empaneled and sworn to try said action. Witnesses on the part of the plaintiff and defendant were sworn and examined. After hearing the evidence, the argu-

ments of counsel and instructions of the court, the jury retired to consider of their verdict and subsequently returned into court with the verdict duly signed, finding for the plaintiff in the sum of Five Thousand Five Hundred Ninety Dollars.

Wherefore, by virtue of the law and by reason of the premises aforesaid, it is ordered, considered and adjudged that said plaintiff do have and recover from said defendant the sum of Five Thousand Five Hundred and Ninety Dollars, together with costs and disbursements in this action, taxed in the sum of One Hundred Seventy-four and 35/100 Dollars.

Filed September 23, 1914.

A. L. Richardson, Clerk.

Endorsed: Filed June 21, 1915.

A. L. Richardson, Clerk.

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“EXHIBIT D.”

(Title of Court and Cause.)

No. 509—In Equity.

PETITION TO INTERVENE.

*To the Honorable Judge of the District Court of the United States for the District of Idaho, Southern Division.*

The petition of L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, citizens of and residing in Alleghaney County, in the State of Pennsylvania, humbly complaining of Guy I. Towle, plaintiff, and the Great Shoshone and Twin Falls Water Power Company, a corporation, defendant in the above entitled cause, would show unto your



Honor that Guy I. Towle, plaintiff, did on the 2nd day of November, 1914, file his bill in this cause, wherein he alleges that he is the owner and holder of a certain demand promissory note dated May 26th, 1913, in the amount of \$12,857.29; that the payment of said note had been duly demanded and that there was due and owing thereon to the plaintiff the sum of \$12,857.29, with interest at the rate of 6% per annum from May 26th, 1913; that the plaintiff brought his bill on his own behalf and on behalf of all creditors of the Great Shoshone and Twin Falls Water Power Company and prayed the court for the appointment of a receiver of the defendant to take charge of and preserve the property of the defendant for the protection of the rights of the plaintiff and of all other parties in interest, as more fully appears in the bill of complaint on file in this action; that on the 2nd day of November, A. D. 1914, the defendant, Great Shoshone and Twin Falls Water Power Company, filed its answer admitting the allegations contained in the Bill of Complaint and joining with the plaintiff in its prayer for the appointment of a receiver.

That the petitioners claim an interest in the property of the defendant corporation on the ground that the said defendant, on the 2nd day of July, 1914, for value received, executed and delivered to the said L. L. McClelland, deceased, its promissory note in the sum of \$20,000, bearing date July 2nd, 1914, payable in five years from date thereof, without interest, at any bank in New York City; that the said

note has not been paid, nor any part thereof; that under the order of this court, made May 6th, 1915, the interveners herein are required to intervene in this cause and to present their claims for approval; that the interveners herein filed their claim with said receiver on or before the 10th day of August, 1915, as provided for in said order, and also filed with this court its claim and petition for intervention within said time.

Wherefore, Interveners pray for permission to file their petition in intervention in accordance with the order of your Honorable Court, made in this cause on the 6th day of May, 1915, and to participate in the distribution of the assets of the receivership estate.

And they will ever pray, etc.

MARTIN & CAMERON,  
Attorneys for Interveners,  
Residing at Boise, Idaho.

Endorsed: Filed August 11, 1915.

A. L. Richardson, Clerk.

By Pearl E. Zanger, Deputy.

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“EXHIBIT D-a.”

(Title of Court and Cause.)

Equity No. 509.

CROSS BILL OF COMPLAINT.

*To the Honorable the Judges of said Court:*

Your orators, L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, complain and say:

FIRST: That your orators are the duly appointed and qualified executors of the estate of L. L. McClelland, deceased, and that Letters Testamentary upon said estate were duly issued unto them, as Executors, by the Register of Wills of Allegheny County, Pennsylvania, on the 26th day of December, A. D. 1914.

SECOND: That the Great Shoshone and Twin Falls Water Power Company, the defendant above named, on the second day of July, A. D. 1914, for value received, executed and delivered unto the said L. L. McClelland its promissory note in the sum of Twenty Thousand (\$20,000.00) Dollars, bearing date of July 2, 1914, payable in five years from date thereof, without interest, at any bank in New York City, a true copy of which note is hereto attached, marked Exhibit "A", and made a part hereof.

THIRD: That the Great Shoshone and Twin Falls Water Power Company under the terms of said note is indebted unto your orators as executors of the estate of L. L. McClelland in the sum of Twenty Thousand (\$20,000.00) Dollars, payable July 2nd, 1919.

FOURTH: That your orators, as said executors, are entitled to participate in the distribution of the assets of the Great Shoshone and Twin Falls Water Power Company and to receive the proportionate share thereof to which the then present value of said note may entitle them.

Your orators therefore, in accordance with the order of your Honorable Court made in this cause on

the 5th day of May, A. D. 1915, herewith present their claim, as said executors, and pray that they may be permitted to intervene in the above entitled cause and to participate in the distribution of the assets of the receivership estate.

And they will ever pray, etc.

ED. B. SCULL,

L. M. PLUMER,

Executors of the Estate of L. L. McClelland.

MARTIN & CAMERON,

Attorneys for Cross-Complainants.

Boise, Idaho.

State of Pennsylvania,  
County of Allegheny,—ss.

Before me, the undersigned authority, personally appeared L. M. Plumer, who being duly sworn according to law, deposes and says that he has knowledge of the facts set forth in the foregoing Cross Bill of Complaint and that the facts set forth therein are true and correct as he verily believes.

L. M. PLUMER.

Sworn to and subscribed before me this 31st day of July, 1915.

KATHERINE K. GEORGE,

(Seal)

Notary Public.

My commission expires January 16th, 1919.

*EXHIBIT "A".*

New York, N. Y., July 2, 1914.

\$20,000.00

.....Five years....after date, the Great Shoshone and Twin Falls Water Power Company promise to pay to the order of L. L. McClelland, Twenty

Thousand and no/100 Dollars, at any bank in New York City, without interest.

VALUE RECEIVED.

GREAT SHOSHONE & TWIN FALLS WATER  
POWER CO. (Signed) J. H. PURDY,  
Vice-President.

No..... Due.....

Filed August 10, 1915.

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“*EXHIBIT E.*”

(Title of Court and Cause.)

Equity No. 509.

State of New York,  
County of New York,  
City of New York,—ss.

On this 30th day of July, 1915, before me, the undersigned, personally appeared Sturt H. Patterson, personally known to me, who being by me duly sworn, deposes and says:

That he is the Vice-President and Treasurer of The American Water Works & Electric Company, Incorporated, hereinafter called the claimant, and its duly authorized agent in the making of this affidavit, and that The Great Shoshone & Twin Falls Water Power Company, the defendant in the above entitled cause, is justly indebted unto the claimant on account of the matters and things hereinafter mentioned and in the amounts hereinafter set forth, with interest thereon, to-wit:

First. On open book account of the defendant company unto the American Water Works & Guarantee



Company in the sum of Five Hundred Fifty-one Thousand Seven Hundred Seventy-six Dollars Sixty-two Cents (\$551,776.62) with interest thereon from July 7th, 1913, duly assigned and transferred for a valuable consideration unto the claimant herein.

Said book account is exceedingly voluminous as its various items are on account of numerous charges made against the defendant company by said Guarantee Company on account of the construction and equipment of the power projects and transmission lines and systems of the defendant company by said Guarantee Company extending over a period of about six (6) years, and of charges made for advances by said Guarantee Company, to said defendant company for the purposes aforesaid and in the financing of the defendant company, all of which the defendant company promised to pay unto said Guarantee Company but which it has failed to do; that a complete transcript thereof would fill many dozens of pages of closely typewritten matter and your affiant is informed that the furnishing of such transcript would on that account be unnecessary and unnecessary for the further reason that the books of the defendant company show it to be indebted unto said Guarantee Company on account of the matters in this paragraph mentioned in the amount hereinbefore given.

Second. That the defendant company is further indebted unto the claimant herein on account of expenditures made by the receivers of the American Water Works and Guarantee Company under orders of the court of their appointment authorizing the

making of the same and which were made at the special instance and request of the defendant company, and which the defendant company promised to repay but has failed so to do, with interest on said expenditures and advances at six per cent (6%) per annum from the dates next hereinafter mentioned, at which time such expenditures and advances were made and an itemization of which is as follows:

July 22, 1913.....	\$ 19.02
Sept. 19, 1913.....	2,500.00
Oct. 24, 1913.....	2,500.00

That the said claims have been duly assigned to the claimant herein for a valuable consideration and are justly owing unto it by the said defendant company.

Third. That defendant company is further indebted unto the claimant herein on account of a certain promissory note of the defendant company, dated June 15, 1913, in the sum of Thirty-eight Thousand Two Hundred Forty-one (\$38,241.00) Dollars bearing interest at six per cent (6%) per annum, less a credit entered on this note July 2, 1914, in the sum of Twenty Thousand (\$20,000) Dollars. The said note was payable to the order of said Guarantee Company, duly endorsed for transfer, and was acquired by claimant for valuable consideration and is now held by claimant.

Fourth. That the defendant company is further indebted unto the claimant herein in the sum of Sixty-seven Thousand Five Hundred Ninety Dollars and Fifty-eight Cents (\$67,590.58) with interest

thereon from the 7th day of July, 1913, on account of the following matters and things:

That in July, 1913, the American Water Works & Guarantee Company in the suit of Frank G. Glover et al. vs. said company in the District Court of the United States for the Western District of Pennsylvania, was placed in the hands of receivers under an order of said court and at that time that company had on deposit with various banks the sum of Sixty-seven Thousand Five Hundred Ninety Dollars and Fifty-eight Cents (\$67,590.58) and said banks held the unsecured promissory notes of the defendant company (all maturing within six (6) months from July 7, 1913) payable to the order of said American Water Works & Guarantee Company to the aggregate amount of Three Hundred Thirty-three Thousand Six Hundred Forty-three Dollars Seventy-one Cents (\$333,643.71) in their principal sums, the same having for a valuable consideration been delivered to said Guarantee Company and by it endorsed and discounted with said banks.

That the aforesaid sum of money belonging to said Guarantee Company was on July 7, 1913, impounded by the banks holding said funds on deposit and was by said banks applied to payment *pro tanto* of the sums owing to said banks holding such notes.

That the amounts for which claim is hereinbefore made were acquired by claimant at a public sale of all of the property and assets of said American Water Works & Guarantee Company as an entirety in the above entitled cause against said company in the

United States District Court for the Western District of Pennsylvania under a decree of sale made on April 16, 1914, which decree of sale was made absolute by an order entered in said suit on the 28th day of April, 1914, and pursuant to which a deed was executed and delivered under date of May 1, 1914, unto claimant for all of the property and assets of said Guarantee Company.

That in and by said deed there was thus transferred to the claimant herein all of the claims of the said Guarantee Company hereinbefore referred to and of its receivers against the defendant herein, and on account of the purchase by the claimant of said property and assets of said Guarantee Company and the deed conveying the same, the claimant herein is entitled not only to reimbursement for the amount referred to in this paragraph but to payment by the defendant of the other items hereinbefore claimed with interest thereon as stated.

Fifth. That the defendant Company is further indebted unto the claimant herein in the sum of One Hundred Five Thousand Seven Hundred Three Dollars and Ninety Cents (\$105,703.90) with interest thereon at six per cent (6%) per annum from April 30, 1914, advanced to the defendant company at its special instance and request by the Stockholders Protective Committee of said Guarantee Company and which the defendant company promised to repay but has failed so to do.

That the above mentioned claim of said Stockholders Protective Committee was duly assigned unto the



claimant herein and the amounts now represented by this claim are justly due and owing unto the claimant herein.

Sixth. That the said defendant company is further indebted unto the claimant herein in the sum of Eleven Thousand Eight Hundred Eighty-eight Dollars and Thirty-seven Cents (\$11,888.37), less rebates allowed amounting to Six Hundred Eighty-one Dollars and Fifty-eight Cents (\$681.58) and protest fees amounting to Eleven Dollars and Forty-six Cents (\$11.46), a total of Eleven Thousand Two Hundred Eighteen Dollars and Twenty-five Cents (\$11,218.25) being in payment of interest as adjusted as of April 30, 1914, with the banks then holding the promissory notes of the defendant company hereinbefore mentioned and which payment was advanced by claimant unto defendant company at the special instance and request of the defendant company and which the defendant company promised to repay but has failed so to do, and which amount of Eleven Thousand Two Hundred Eighteen Dollars and Twenty-five Cents (\$11,218.25) with interest thereon from the eleventh day of August, 1914, at six per cent (6%) per annum, is still due and owing unto the claimant.

Seventh. That the defendant is further indebted unto the claimant herein in the sum of Three Hundred Twenty-two Thousand Three Hundred Dollars (\$322,300) on account of the following matters and things:



That three of the promissory notes of the defendant company referred to in paragraph Fourth hereof were in July, 1913, substituted with three new notes of the defendant company for like amounts with accrued interest to the date of substitution and these new notes so issued in substitution were issued and dated on the following dates and for the following amounts:

July 25, 1913.....	\$30,251.78
July 28, 1913.....	34,693.91
July 29, 1913.....	36,725.69

All of these notes so issued in substitution were made payable to the order of said Guarantee Company and were by it endorsed for transfer pursuant to an order of said United States District Court for the Western District of Pennsylvania in the above entitled cause against said company and were delivered to the bank holding the notes for which the new notes were issued in substitution.

That between the 15th day of May, 1914, and the 31st day of August, 1914, said new notes so issued in substitution and the then remaining notes referred to in paragraph Fourth thereof, were substituted with new notes of the defendant company to the aggregate amount of Two Hundred Sixty-seven Thousand Five Hundred One Dollars and Ninety-three Cents (\$267,501.93) and at the request of the defendant company and deposited as collateral security for the payment of the principal and interest of the said new notes so issued in substitution, the sum of Three Hundred Twenty-two Thousand Three Hun-

dred Dollars (\$322,300) at par of its collateral trust 20-year five per cent Gold Bonds of the claimant, dated April 1, 1914, and issued under and secured by its Deed of Trust unto the Bankers Trust Company of the City of New York, which bonds under the terms of such new notes so issued in substitution may be sold by the holders of said notes upon non-payment of the principal thereof, any of which notes may be made due and payable by the respective holders thereof upon non-payment at any semi-annual date, August 1st or February 1st of each year, in event of default in payment of interest then maturing. The aforesaid notes so given by the defendant in substitution are all dated as of the first of February, 1914, and are by their terms due and payable on or before two years from that date.

That owing to the insolvency of the defendant company and the pending foreclosure of its mortgage, dated May 1, 1910, unto the North American Trust Company and James D. O'Neil, Trustees, the present trustees thereunder being The Equitable Trust Company of New York and F. R. Babock, securing bonds outstanding thereunder to the aggregate amount of Two Million Three Hundred Forty Thousand Dollars (\$2,340,000) in their principal sums, the par value of the above bonds will be lost to the claimant herein as the defendant company will be utterly unable to make payment either of principal or interest upon said notes and which said bonds will be sold to enforce the security of said notes, and on that account the defendant company is justly indebted unto the claim-

ant for the par value of said bonds of the claimant amounting to Three Hundred Twenty-two Thousand Three Hundred Dollars (\$322,300), together with interest accruing thereon from April 1, 1915, to which date interest on said bonds has been paid.

Eighth. That defendant company is further indebted unto the claimant herein in the following amounts with interest thereon from the following dates:

October 5, 1914.....	\$4,093.71
January 31, 1915.....	8,025.03
July 30, 1915.....	8,025.03

These amounts are due on account of interest payments made by the claimant upon the above mentioned notes of the defendant company referred to in paragraph Seventh hereof, and which the claimant has found it necessary to pay on account of its having deposited its bonds as collateral security for the payment of said notes. Interest is due unto claimant upon the above mentioned amounts from the date of said respective payments at the rate of six per cent (6%) per annum.

Ninth. The defendant company is further indebted unto the claimant herein in the amounts next hereinafter set forth with interest thereon from the respective dates of the assignments hereinafter mentioned, at six per cent (6%) per annum, on account of the assignment to the claimant herein of open book accounts of the following named companies against said defendant company:

Southern Idaho Telephone Company, Limited,

334 *The Equitable Trust Company, etc., vs.*

Amount of account assigned . . . . . \$ 117.38

Assignment dated October 22, 1914.

Twin Falls North Side Land & Water Company,

Amount of account assigned . . . . . 114,024.19

Assignment dated July 3, 1914.

Twin Falls Salmon River Land & Water Company,

Amount of account assigned . . . . . 5,529.95

Assignment dated June 4, 1914.

Twin Falls North Side Investment Co., Limited,

Amount of account assigned . . . . . 29,029.27

Assignment dated October 2, 1914.

North Side Canal Company, Limited,

Amount of account assigned . . . . . 32.59

Assignment dated September 2, 1914.

The aforesaid accounts were acquired by claimant for a valuable consideration and are justly due and owing unto it.

Tenth. The defendant company is further indebted unto the claimant herein in the sum of Eleven Thousand Seven Hundred Twenty-five Dollars and Fifty-two Cents (\$11,725.52) with interest thereon at six per cent (6%) per annum from June 8th, 1914, on account of the following matters and things:

On the date last mentioned the defendant company executed and delivered its four certain promissory notes dated June 8, 1914, each for the sum of Two Thousand Nine Hundred Thirty-one Dollars and Thirty-eight Cents (\$2,931.38) each to the order of Slick Brothers Construction Company, Limited, all of which have been acquired by the claimant herein for a valuable consideration and are now held by it,

each of which notes is of like tenor and date and is duly endorsed for transfer.

Eleventh. That defendant company is further indebted unto the claimant herein on items of open book account in the sum of Twenty-five Thousand Five Hundred Thirteen Dollars and Four Cents (\$25,513.04) appearing on statement of account hereto attached and marked "Exhibit A" and which items are not included in any of the items upon which proof of claim has hereinbefore been made after allowing credits on such sum last named to the amount of Nineteen Thousand Six Hundred Thirty Dollars and Forty-two Cents (\$19,630.42), leaving a net balance on account of the matters in this paragraph referred to of Five Thousand Nine Hundred Eighty-two Dollars and Sixty-two Cents (\$5,982.62). This statement of account includes all items upon which proof has hereinbefore been specifically made except those set forth in paragraphs Third, Seventh and Tenth hereof.

Affiant further states that the amounts for which claim is hereby made are justly due and owing unto the claimant by defendant company and that there are no set-offs or counter-claims against any of the same other than hereinbefore specifically set forth and other than as set forth in said Exhibit A.

STEWART H. PATTERSON.

Sworn and subscribed to before me this 30th day of July, 1915.

A. G. SWAN,  
Notary Public.



## EXHIBIT A.

GREAT SHOSHONE & TWIN FALLS WATER  
POWER CO. JULY 30, 1915.

In account with  
AMERICAN WATER WORKS & ELECTRIC CO.  
Inc.

1913

July 7—Balance Open Account to A. W. W. & G. Co. . . . .	\$551,776.62
Sept. 30—Advances by Receivers of A. W. W. & G. Co. . . . .	2,500.00
Oct. 31—Advances by Receivers of A. W. W. & G. Co. . . . .	2,500.00

1914

Apr. 30—Advances by Receivers of A. W. W. & G. Co. . . . .	19.02
Apr. 30—Cash advanced to Common- wealth Trust Co. . . . .	105,703.90
Apr. 30—Cash of A. W. W. & G. Co. im- pounded and applied on notes of Gt. Sho. & T. F. W. P. Co. by banks. . . . .	67,590.58
Apr. 30—Interest and protest fees on bank loans to 5/1/14 . . . . .	11,218.25
June 4—Book account of T. Falls, Sal- mon River L. & W. Co. against Gt. Sho. & T. F. W. P. Co. assigned . . . . .	5,529.95
June 5—W. L. Clark Co., Insurance. . . . .	324.85
Ed Ball Agency Premium on Fulton Bond . . . . .	10.00
Westinghouse Elec. & Mfg. Co., Inter- est on Note . . . . .	86.25

June 26—Westinghouse Elec. & Mfg. Co., Interest on Notes . . . . .	84.33
July 23—Book account of T. Falls No. Side L. & W. Co. against Gt. Sho. & T. F. W. P. Co. assigned . . . . .	114,024.19
Aug. 18—Evening Post Printing Office, Printing . . . . .	115.25
Aug. 18—Evening Post Printing Office, Printing . . . . .	28.00
Sept. 2—Book account of the North Side Canal Co., Ltd., against Gt. Sho. & T. F. W. P. Co. assigned . . . . .	32.59
Sept. 29—Westinghouse Elec. & Mfg. Co., Interest on Notes . . . . .	191.34
Oct. 2—Book account T. Falls No. Side Investment Co., Ltd., against Gt. Sho. & T. F. W. P. Co. assigned . . . . .	29,029.27
Oct. 5—Interest on Bank Loans to 8/1, 1914 . . . . .	4,093.71
Oct. 22—Book account Sou. Idaho Telephone Co., Ltd., against Gt. Sho. & T. F. W. P. Co. assigned . . . . .	117.38
Oct. 28—Delaware Trust Co., Stock Transfer Book . . . . .	2.00
Oct. 5—Westinghouse Elec. & Mfg. Co., Interest on Notes . . . . .	64.62
Oct. 5—Chubb & Son, Insurance . . . . .	.20
Oct. 5—Kirkland & Yardly, Insurance . . . . .	106.50
Oct. 31—Amounts paid out under contracts of Gt. Sho. & T. F. W. P. Co.,	

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dated July 29 and 31, 1914, guaranteed by A. W. W. & E. Co., Inc. . . . .	24,497.50
Nov. 16—Chubb & Son, Insurance . . . . .	.10
Dec. 23—Filing Annual Report . . . . .	2.00
1915	
Jan. 31—Interest on Bank Loans to Feb. 2, 1915 . . . . .	8,025.03
Feb. 16—Chubb & Son, Insurance . . . . .	.10
July 30—Interest on Bank Loans to Aug. 1, 1915 . . . . .	8,025.03
Less following credits:	
1914	
Apr. 30—On account assignment claim against Twin Falls Oakland Land & Water Company . . . . .	5,056.28
July 22—On account assignment claim against Idaho Southern Railroad Co. . . . .	14,571.59
Sept. 3—Received from R. L. Kester on account . . . . .	2.55

Endorsed: Filed August 9, 1915.

A. L. Richardson, Clerk.

By Pearl E. Zanger, Deputy.

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*EXHIBIT F.*

Equity Cause No. 509.

*To W. T. Wallace, Receiver of the Great Shoshone and Twin Falls Water Power Company:*

The undersigned, Jake M. Shank, hereby presents his claim against the Great Shoshone and Twin Falls Water Power Company with a statement regarding same:

Great Shoshone and Twin Falls Water Power Company, debtor to Jake M. Shank, creditor, amount due on account of contract of settlement of claim for damages dated March 11, 1914.

Principal .....	\$4000.00
Interest .....	390.00
	<hr/>
Total .....	\$4390.00

The above claim grows out of a contract dated March 11, 1914, whereby the Great Shoshone and Twin Falls Water Power Company agreed to pay claimant the sum of \$8,000.00 in full settlement of a suit and claim for damages against the said company then pending. The company has heretofore paid on the principal the sum of \$4,000.00, leaving the balance due as stated above.

JAKE M. SHANK,  
Claimant.

State of Idaho,  
County of Twin Falls,—ss.

Jake M. Shank, of Twin Falls, Idaho, being first duly sworn on oath deposes and says: That he has read the above and foregoing claim and knows the contents thereof; that the items therein set forth are true and correct, and the amount thereof, to-wit, \$4,390.00, is now due and payable to claimant.

JAKE M. SHANK.

Subscribed and sworn to before me this 13th day of August, 1915.

W. P. GUTHURE,  
Notary Public.

Lodged August 14, 1915.

*EXHIBIT G.*

(Title of Court and Cause.)

Equity No. 509.

ORDER ALLOWING CLAIM OF EXECUTORS  
OF ESTATE OF L. L. McCLELLAND, DE-  
CEASED.

The duly verified claim of L. M. Plumer and E. B. Scull, Executors of the estate of L. L. McClelland, deceased, duly filed herein on the 10th day of August, 1915, pursuant to the order of this court, made in this cause on the 5th day of May, 1915, coming on for hearing for allowance or rejection this 16th day of October, 1915, in chambers, S. H. Hays, Esquire, appearing for the receiver, William T. Wallace, and Messrs. Martin & Cameron appearing for the above named claimant, and upon the statement of the said receiver, William T. Wallace, that the above named claim appears upon the books of the Great Shoshone & Twin Falls Water Power Company as a valid and existing claim against said company and it further appearing that the said receiver knows no reason why said claim should not be approved and allowed, it is

ORDERED, ADJUDGED AND DECREED that the claim of L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, duly filed herein on the 10th day of August, 1915, is hereby allowed and approved for and in the sum of Fifteen Thousand Six Hundred Twenty-five and no/100ths Dollars.



October 16, 1915.

FRANK S. DIETRICH,  
District Judge.

Endorsed: Filed October 16, 1915.

A. L. Richardson, Clerk.

By Pearl E. Zanger, Deputy.

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*EXHIBIT "H".*

(Title of Court and Cause.)

Equity No. 509.

ORDER ALLOWING CLAIM.

The claim of the said Jake M. Shank having been heretofore filed, pursuant to an order of this court, coming on for hearing for allowance or rejection this . . . day of October, 1915, in chambers, S. H. Hays, Esquire, appearing for the Receiver, William T. Wallace, and Alfred A. Fraser, Esquire, appearing for the above-named claimant; and upon the statement of the said receiver, William T. Wallace, that the above-named claim appears upon the books of the Great Shoshone & Twin Falls Water Power Company as a valid and existing claim against said company, and it further appearing that the said receiver knows of no reason why said claim should not be approved or allowed,

It is hereby ORDERED, ADJUDGED AND DECREED that the claim of said Jake M. Shank is hereby allowed and approved in the sum of Four Thousand Three Hundred Ninety Dollars.

Dated this 25th day of October, 1915.

FRANK S. DIETRICH,  
District Judge.

Endorsed: Filed October 25, 1915.

W. D. McReynolds, Clerk.

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*EXHIBIT "I".*

(Title of Court and Cause.)

In Equity—No. 509.

ORDER ALLOWING CLAIM OF GUY I. TOWLE.

The above named Guy I. Towle, complainant herein, having heretofore on the 2nd day of November, 1914, duly filed herein a duly verified complaint setting forth among other things that the above named defendant company was on said date truly and justly indebted to him on said date in the sum of \$12,857.-29 with interest thereon at the rate of six per cent per annum from the 26th day of May, 1913, upon a demand promissory note for said principal sum made and delivered on said date to the American Waterworks & Guarantee Company, a New Jersey corporation, by the above named defendant, of which said note the said Guy I. Towle was on the 2nd day of November, 1914, and still is the owner and holder, and the above named defendant having, by its answer to the said complaint of the said Guy I. Towle, which answer was also filed herein on the 2nd day of November, 1914, admitted the allegations of indebtedness to Guy I. Towle, and this matter coming on for hearing on this . . . . . day of October, 1915, in chambers for allowance or rejection of said claim

of indebtedness, S. H. Hays appearing for the Receiver herein, William T. Wallace, and Karl Painé appearing for the plaintiff and claimant, Guy I. Towle, and upon the statement of the receiver that the above named claim appears upon the books of the Great Shoshone & Twin Falls Water Power Company as a valid and existing claim against said company and it further appearing that said Receiver knows no reason why said claim should not be approved and allowed, it is

Ordered, adjudged and decreed that the claim of Guy I. Towle as set forth in the verified complaint of said Guy I. Towle duly filed herein on the 2nd day of November, 1914, be, and the same hereby is, allowed and approved for and in the sum of \$13,963.01.

Dated October 23, 1915.

FRANK S. DIETRICH, Judge.

Filed Oct. 23, 1915.

W. D. McReynolds, Clerk.

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*EXHIBIT "K".*

(Title of Court and Cause.)

In Equity—No. 509.

**ORDER DIRECTING CREDITORS TO PRESENT CLAIMS, AND NOTICE TO BE GIVEN.**

The petition of William T. Wallace, Receiver herein, for an order requiring all persons having claims against the defendant company and the receivership estate to present their claims, having been duly presented and considered, and it appearing that claims

against the defendant company and the receivership estate should be presented for allowance or approval to the Receiver, and that any claims for preferential payments should likewise be presented;

IT IS ORDERED That all creditors having claims for preference under the order heretofore made by the Court herein relating to the payment of operating and other similar expenses within six months prior to the appointment of the Receiver be required to present their said claims to the said William T. Wallace, Receiver of the defendant corporation, for allowance within *Ninety* days from this date, and other creditors having claims against the assets of said receivership estate be required to intervene in this cause within a like time and present their claims for approval;

That said Receiver mail to each creditor known to him a notice of the substance of this order substantially in the following form:

*To all Creditors of the Great Shoshone and Twin Falls Water Power Company:*

Notice is hereby given pursuant to an order of the District Court of the United States for the District of Idaho, Southern Division, in a cause therein pending wherein Guy I. Towle is Plaintiff and the Great Shoshone and Twin Falls Water Power Company is defendant, being Case No. 509; that all creditors having claims or preference not heretofore allowed on account of claims arising from the operations of said company prior to the 2nd day of November, 1914, the date

of the appointment of the Receiver in said cause, which were proper to be paid as expenses of operation and maintenance at any time within six months prior to the appointment of said Receiver, are directed to file their claims with said Receiver on or before the 10th day of August, 1915, and all other creditors are directed to present their claims and intervene in said cause on or before said date, and all claims not presented for filing with the Receiver or presented by intervention within said time shall be barred from any participation in the assets of the Receivership estate.

Dated May . . . . ., 1915.

By order of the Court.

By WILLIAM T. WALLACE,  
Receiver.

That a like notice be published once a week for four (4) successive weeks in the Idaho Daily Statesman and in the Evening Capital News, newspapers published in the City of Boise, County of Ada, State of Idaho, and for a like period and at like intervals in at least one newspaper published in the City of Twin Falls, in the County of Twin Falls and State of Idaho.

Dated May 4, 1915.

(Signed) FRANK S. DIETRICH,  
District Judge.

Filed May 4, 1915.



*EXHIBIT "L".*

(Title of Court and Cause.)

In Equity—No. 509.

ORDER.

It appearing that, pursuant to an order heretofore made in this cause, claims against the above-named defendant have been filed and subsequently reported to this Court by the Receiver herein:

It is now Ordered that any person interested and who desires to contest the validity of or the amount due upon any such claim, shall, on or before January 17, 1916, file herein his objections thereto wherein he shall join issue as to such claim.

It is further ordered that hearing upon the issues so joined is hereby set for February 14, 1916, at two o'clock P. M.

It is directed that the Clerk of this Court shall immediately hereafter mail a copy of this order to the solicitors for each of the several claimants at their respective addresses or in case no solicitor appears for any claimant, then a copy shall be mailed to such claimant.

Dated this 24th day of December, 1915.

FRANK S. DIETRICH,  
District Judge.

Filed Dec. 24, 1915.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

In Equity—No. 526.

PETITION OF AMERICAN WATER WORKS  
AND ELECTRIC COMPANY FOR APPEAL,  
AND ORDER ALLOWING APPEAL.

*Comes now* The American Water Works and Electric Company, a corporation, and conceiving itself aggrieved by the orders made and entered herein on the 14th day of February, 1916, and 1st day of March, 1916, in the above entitled cause, denying the petition or application of your petitioner to intervene in said cause, and by the decree made and entered herein on the 6th day of Dec., 1915, and from the order made and entered March 1st, 1916, directing payment of money thereunder, and appeals from said orders and decree so made and entered as aforesaid to the United States Circuit Court of Appeals for the Ninth Circuit, insofar as said orders and decree order and direct the Special Master to disburse what was designated in said decree as the "Unsecured Creditors' Fund" among certain designated creditors, to-wit: Guy I. Towle, Carl J. Hahn as administrator of the estate of Harry M. King, deceased, L. M. Plumer and E. B. Scull, as executors of the estate of L. L. McClelland, deceased, and Jake M. Shank, to the exclusion of other creditors of the defendant Great Shoshone and Twin Falls Water Power Company, for the reasons specified in the assignment of errors which is filed herewith, and your petitioner prays that this appeal may be allowed and that citation issue as provided by law, and that a transcript

of the record, proceedings and papers upon which said decree and order were based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner, desiring to stay the enforcement of said order and decree insofar as the same authorize or direct the Special Master to pay out or disburse such Unsecured Creditors' Fund, pending the determination of this appeal and to preserve such Unsecured Creditors' Fund pending such appeal, tenders a supersedeas bond in such amount as the Court may require for such purpose, and prays that with the allowance of the appeal a supersedeas be issued.

March 4, 1916.

WYMAN & WYMAN,  
Solicitors for American Water Works and  
Electric Company.

ORDER ALLOWING APPEAL.

*And now*, to-wit, on the 4th day of March, 1916, IT IS ORDERED that the petition be granted and the appeal be allowed as prayed for, from the orders but not from the decree, the same to operate as a supersedeas upon the petitioner filing a bond in the sum of \$3,000.00 with sufficient sureties, to be conditioned as required by law.

FRANK S. DIETRICH,  
District Judge.

Endorsed: Filed March 4, 1916.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

In Equity—No. 526.

ASSIGNMENT OF ERRORS.

*And now comes* the American Water Works and Electric Company, a corporation, and having presented an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree made and entered in the above entitled cause on the 6th day of December, 1915, and from an order made and entered herein on the 14th day of February, 1916, and from an order entered herein on the 1st day of March, 1916, denying the petition of the undersigned for leave to intervene in said cause, and says that said decree and said orders made and entered as aforesaid and the decision made and filed by the Court in this cause on the 28th day of February, 1916, are erroneous and unjust to this intervenor, and particularly in this:

1. Because the Court erred in holding, adjudging and decreeing in its said decree, that the Unsecured Creditors' Fund in said decree mentioned should be paid to Guy I. Towle, Carl J. Hahn as administrator of the estate of Harry M. King, deceased, L. M. Plumer and E. B. Scull as executors of the estate of L. L. McClelland, deceased, and Jake M. Shank, in the respective amounts set forth in said decree, and that the balance, if any, of said fund should then be paid to the complainant, Equitable Trust Company of New York, and in thereafter ordering the payment and distribution of said secured creditors' fund to the above named parties.

2. Because the Court erred in not holding and decreeing that such Unsecured Creditors' Fund should be paid to the Receiver of the Great Shoshone and Twin Falls Water Power Company in Equity Cause No. 509, for distribution and payment in said cause according to the principles of equity and the respective rights of the creditors of said Great Shoshone and Twin Falls Water Power Company.

3. Because the Court erred in not permitting the American Water Works and Electric Company to intervene in said cause and share in the distribution of said Unsecured Creditors' Fund equitably and ratably with the other creditors of said Great Shoshone and Twin Falls Water Power Company, or with the said Guy I. Towle, C. J. Hahn, administrator as aforesaid, L. M. Plumer and E. B. Scull, executors as aforesaid, and Jake M. Shank.

4. Because the Court erred in for any reason denying the application of the American Water Works and Electric Company to intervene in said cause.

5. Because the Court erred in denying on the 14th day of February, 1916, the petition in intervention and complaint in intervention then tendered by said American Water Works and Electric Company, and in requiring it to make further or additional showing before it would be permitted to intervene.

6. Because the Court erred in holding and deciding that the petition and complaint in intervention tendered on the 28th day of February, 1916, by said American Water Works and Electric Company were insufficient, and in holding and deciding that said



Company was not entitled to intervene in said cause or share in said Unsecured Creditors' Fund.

WHEREFORE, said intervener, American Water Works and Electric Company, prays that the orders so made and entered as aforesaid on the 14th day of February, 1916, and the first day of March, 1916, be annulled and set aside and the District Court directed to permit the said American Water Works and Electric Company to intervene in said cause and share in the distribution of said Unsecured Creditors' Fund, and that such fund be administered and distributed in accordance with the prayer of said complaint in intervention and in accordance with the principles of equity governing the administration and distribution of estates of insolvent debtors, and that the said decree insofar as it orders or directs the Special Master to pay over and distribute said Unsecured Creditors' Fund to any one other than the Receiver of said Great Shoshone and Twin Falls Water Power Company, be modified and corrected, and that it be ordered and directed that said Unsecured Creditors' Fund be paid over to said Receiver in accordance with the prayer of said complaint in intervention.

March 4, 1916.

WYMAN & WYMAN,  
Solicitors for American Water Works and  
Electric Company.

Endorsed: Filed March 4, 1916.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

In Equity—No. 526.

## BOND ON APPEAL.

*Know all Men by These Presents*, That we, American Water Works and Electric Company, a corporation organized under the laws of the State of Virginia, as principal, and the American Surety Company of New York, a corporation organized under the laws of the State of New York, as surety, are held and firmly bound unto the defendants, Guy I. Towle and Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, and the interveners L. M. Plumer and E. B. Scull, executor of the estate of L. L. McClelland, deceased, and Jake M. Shank, and the complainant The Equitable Trust Company of New York, as Trustee, and the other defendants above named, as their respective interests may appear under the decree entered in said cause on the 6th day of December, 1915, and under the orders from which the appeal hereinafter mentioned is taken, in the penal sum of Three Thousand Dollars (\$3,000.00), to be paid to the said defendants, interveners, and complainant as their respective interests may appear, as aforesaid, their and each of their executors, administrators, successors, or assigns, not exceeding, however, in the aggregate the said sum of \$3,000.00; to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 4th day of March, in the year of our Lord, One Thousand Nine Hundred and Sixteen.

The condition of this obligation is such, that:

WHEREAS, the above named American Water Works and Electric Company, the said principal, has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from certain orders made in said cause on the 14th day of February, 1916, and the first day of March, 1916, by the United States District Court for the District of Idaho, Southern Division; denying the petition of said principal to intervene in said suit and ordering certain disbursements and payments to be made out of the Unsecured Creditors' Fund created under the decree entered in said cause on the 6th day of December, 1915;

NOW, THEREFORE, If the above named principal, American Water Works and Electric Company, shall prosecute its said appeal to effect, and answers all damages and costs, if it fails to make its said plea good, then the above obligation to be void; otherwise, the same shall be and remain in full force and virtue.

IN WITNESS WHEREOF, the said principal has caused its name to be hereunto subscribed by its duly authorized solicitors and attorneys, and the said surety has caused its name to be hereunto subscribed by

its duly authorized officers and its corporate seal affixed the day and year first above written.

AMERICAN WATER WORKS AND ELECTRIC  
COMPANY,                      By WYMAN & WYMAN,

Its Solicitors.

AMERICAN SURETY CO. OF NEW YORK,

By BRADLEY SHEPPARD,

Attest:                      Resident Vice-President.

OLIVER O. HAGA,

Resident Assistant Secretary.

The foregoing Bond is hereby approved to operate as a supersedeas, and all orders heretofore made relative to the payment or disbursement of the Unsecured Creditors' Fund mentioned in the decree herein and the provisions of the decree relative to the disbursement of such fund, are hereby stayed to the end that such fund may remain intact until the determination of the appeal.

Dated this 6th day of March, 1916.

FRANK S. DIETRICH,

District Judge.

Endorsed: Filed March 6, 1916.

W. D. McReynolds, Clerk.

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(Title of Court and Cause.)

In Equity—No. 526.

PRAECIPE ON APPEAL OF THE AMERICAN  
WATER WORKS AND ELECTRIC COMPANY.

*To the Clerk of the above entitled Court:*

You will please prepare the record on the appeal of the American Water Works and Electric Company

taken in the above entitled cause from those certain orders entered therein on February 14, 1916, and March 1st, 1916, denying the petition of said American Water Works and Electric Company to intervene, and that certain order of March 1st, 1916, made and entered therein directing the Special Master to pay prior lien claimants.

Such record is to consist of the following:

1. Petition of the American Water Works and Electric Company to intervene.

2. Complaint of the American Water Works and Electric Company in intervention.

3. Amended complaint of the American Water Works and Electric Company in intervention lodged on or about March 4, 1916, and dated February 28, 1916.

4. Statement on appeal of the American Water Works and Electric Company.

5. Orders of February 14, 1916, and March 1st, 1916, denying the petition of the American Water Works and Electric Company to intervene.

5-A. Petition for order on Special Master to pay prior lien claims.

6. Order of March 1st, 1916, directing Special Master to pay prior lien claimants.

7. All papers in connection with this appeal:

Petition of the American Water Works and Electric Company on appeal.

Order allowing appeal of the American Water Works and Electric Company.



Assignment of Errors of American Water Works and Electric Company.

Citation of American Water Works and Electric Company on appeal.

Bond of American Water Works and Electric Company on appeal.

The orders referred to in 5 and 6 above are set out in full as exhibits to the statement of the appeal of the American Water Works and Electric Company and it will, therefore, be unnecessary to again set them out in full.

The petition numbered 5-A, referred to above, is set out in full in this volume at page 224 and made part hereof.

The petition, complaint and amended complaint referred to in 1, 2 and 3 above are also set out in full as exhibits to the statement on appeal of the American Water Works and Electric Company, and it is unnecessary to set them out again in full.

WYMAN & WYMAN,

Solicitors for Appellant, American Water Works and Electric Company.

Copy received this April 22, 1916, and we join in this praecipe.

MARTIN & CAMERON,

Attorneys for L. M. Plumer, E. B. Scull,  
as executors of the estate of L. L. McClelland, deceased.

KARL PAINE,

Attorney for Guy I. Towle.

A. A. FRASER,  
By MARTIN & CAMERON,  
Attorneys for Jake M. Shank.

J. H. WISE,  
By MARTIN & CAMERON,

Attorney for Carl J. Hahn, Administrator.

Endorsed: Filed April 22, 1916.

W. D. McReynolds, Clerk.

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(Title of Court and Cause.)

In Equity—No. 526.

CITATION.

United States of America,—ss.

To the Defendants, Guy I. Towle, Carl J. Hahn, as administrator of the Estate of Harry M. King, deceased, Great Shoshone and Twin Falls Water Power Company, a corporation, William T. Wallace, as Receiver of Great Shoshone and Twin Falls Water Power Company, and to the Interveners, L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, and Jake M. Shank, and to the Complainant, Equitable Trust Company of New York, as sole Trustee under a deed of trust made by Great Shoshone and Twin Falls Water Power Company, dated May 1, 1910, and supplemental mortgages dated June 21, 1911, and April 7, 1913:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco in the State of California, within thirty

days from the date of this writ, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the District of Idaho, Southern Division, by the American Water Works and Electric Company, Trustee, is complainant, and the Great Shoshone and Twin Falls Water Power Company, a corporation, William T. Wallace, as Receiver of said Great Shoshone and Twin Falls Water Power Company, Guy I. Towle, and Carl J. Hahn, as administrator of the estate of Harry M. King, deceased, are defendants, and L. M. Plumer and E. B. Scull, executors of the estate of L. L. McClelland, deceased, and Jake M. Shank, are interveners, to show cause, if any there be, why the orders and decrees in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Frank S. Dietrich, United States District Judge for the District of Idaho, this 6th day of March, nineteen hundred and sixteen, and of the Independence of the United States the one hundredth and fortieth year.

FRANK S. DIETRICH,

(Seal)

District Judge.

Attest:

W. D. McREYNOLDS, Clerk.

Service of the foregoing citation and receipt of copy thereof, admitted this 6th day of March, 1916.

RICHARDS & HAGA,

Solicitors for Complainant, Equitable Trust  
Company of New York, Trustee.

P. B. CARTER,

Solicitor for Great Shoshone and Twin  
Falls Water Power Company.

S. H. HAYS,

Solicitor for William T. Wallace, Receiver  
of Great Shoshone and Twin Falls Wa-  
ter Power Company.

KARL PAINE,

Solicitor for Guy I. Towle, Defendant.

JAMES H. WISE,

By MARTIN & CAMERON,

Solicitor for Carl J. Hahn as Administra-  
tor of the estate of Harry M. King, de-  
ceased, Defendant.

MARTIN & CAMERON,

Solicitors for L. M. Plumer and E. B. Scull,  
Executors of the estate of L. L. McClel-  
land, deceased, Interveners.

ALFRED A. FRASER,

Solicitor for Jake M. Shank, Intervener.

Endorsed: Filed March 6, 1916.

W. D. McReynolds, Clerk.

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RETURN TO RECORD.

And thereupon it is ordered by the court that the foregoing transcript of the record and proceedings in the causes aforesaid, together with all things thereunto relating, be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

Attest: W. D. McREYNOLDS,

(Seal)

Clerk.

(Title of Court and Cause.)

CLERK'S CERTIFICATE.

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify that the record on the appeal herein of The Equitable Trust Company of New York consists of those pleadings and proceedings designated in its praecipe, set out in full herein on pages 258 to 264, inclusive, and that the record on the appeal herein of the American Water Works and Electric Company consists of those pleadings and proceedings designated by its praecipe, set out in full herein on pages 354 to 356, inclusive; and I further certify that the above and foregoing transcript from pages numbered 1 to 361, inclusive, to be a full, true and complete transcript of all pleadings and proceedings required to be included therein by the praecipes aforesaid.

I further certify that the cost of the record herein on the appeal of The Equitable Trust Company of New York amounts to the sum of \$313.10, and that the said appellant has paid the same, and that the cost of the record on the appeal of the American Water Works and Electric Company amounts to the sum of \$132.15, and that the said American Water Works and Electric Company has paid the same.

I further certify that the time in which to certify and file the record on the appeals of The Equitable Trust Company of New York and the American Water Works and Electric Company and docket the cause in the Circuit Court of Appeals for the Ninth



Circuit was by the Court enlarged and extended to and including the 6th day of May, 1916.

Witness my hand and the seal of said court this 29th day of April, 1916.

W. D. McREYNOLDS,

(Seal)

Clerk.